[Cite as *Meekins v. Oberlin*, 2018-Ohio-1308.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106060

MATTHEW MEEKINS

PLAINTIFF-APPELLANT/
CROSS APPELLEE

vs.

CITY OF OBERLIN, ET AL.

DEFENDANTS-APPELLEES/
CROSS APPELLANTS

JUDGMENT:
AFFIRMED IN PART; REVERSED IN PART
AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-869402

BEFORE: E.A. Gallagher, A.J., Boyle, J., and Keough, J.

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EILEEN A. GALLAGHER, A.J.:

{¶1} Plaintiff-appellant/cross-appellee Matthew Meekins appeals from the trial court's decision granting summary judgment in favor of defendant-appellee/cross-appellant city of Oberlin ("Oberlin" or the "city") on Meekins' claims of false arrest/imprisonment and battery under state law and related federal claims under 42 U.S.C. 1983 ("Section 1983 claims"). Meekins contends that he was wrongfully arrested and prosecuted when the Oberlin Police Department failed to properly investigate false claims made by his son's mother that he had sent her threatening text messages and violated a civil protection order. Oberlin cross-appeals the denial of its motion to dismiss Meekins' complaint for failure to join an indispensable party under Civ.R. 19. For the reasons that follow, we affirm the trial court's judgment in favor of Oberlin as to Meekins' state-law claims, reverse the trial court's judgment in favor of Oberlin as to Meekins' claims under 42 U.S.C. 1983 and remand the matter for further proceedings.

Factual and Procedural Background

{¶2} Meekins and Kimberlee George were involved in a relationship and, in April 2015, had a son. Meekins' and George's relationship deteriorated and Meekins filed an action in the Lorain County Juvenile Court to establish paternity and obtain visitation with his son (the "juvenile court case").

{¶3} On December 30, 2015, George obtained an ex parte domestic violence civil protection order from the Lorain County Court of Common Pleas based on her claim that

Meekins had sent her threatening emails on November 17, 2015, and December 29, 2015. A full hearing on George's petition for a civil protection order was scheduled for January 14, 2016.

{¶4} On January 3, 2016, George went to the Oberlin Police Department and claimed that Meekins had violated the civil protection order by sending her screen shots of prior text conversations that they had exchanged. George indicated that she wanted to pursue criminal charges against Meekins. Two days later, George returned to the Oberlin Police Department and indicated that her attorney had advised her to file a police report regarding the threatening emails she had allegedly received from Meekins in November and December 2015. George again indicated that she wanted to pursue criminal charges against Meekins.

{¶5} After reviewing the allegations, the city prosecutor recommended charging Meekins with domestic violence in violation of R.C. 2919.25(C), and the Oberlin Police Department requested a warrant for Meekins' arrest on that charge. The Oberlin Municipal Court refused to grant the request finding a lack of probable cause due to the absence of "imminent" harm.

{¶6} Meekins denied sending any threatening emails to George. In January 2016, he hired an expert to examine his cell phone and laptop in an attempt to determine the source of the email messages allegedly sent to George. The expert issued a report in which he concluded that the Google searches and locations associated with the email account from which the threatening emails were allegedly sent "more closely related" to

George than Meekins. The expert further stated that this fact, combined with the "lack of corroborating artifacts" on Meekins' electronic devices, strongly suggested that Meekins did not send the emails (the "January 31, 2016 expert report"). The January 31, 2016 report was shared with George's counsel and, two days later, George dismissed her petition for a domestic violence civil protection order.

{¶7} On March 22, 2016, a final pretrial was held in the juvenile court case. It was recommended that Meekins be granted regular visitation with his son. George refused to agree to visitation and a trial was scheduled for April 14, 2016.

{¶8} The next day, George returned to the Oberlin Police Department and reported that she had received a series of texts, beginning on January 12, 2016, and continuing through March 16, 2016, from nine different phone numbers, the content of which threatened her and her son. George told Oberlin Patrol Officer Matthew Sustarsic that she believed the texts were from Meekins, who was either using a "burner" phone or was sending the texts by "spoofing" other telephone numbers. Officer Sustarsic testified that he reviewed the police report regarding the prior complaints George had made against Meekins and could not determine why no action had been taken on them. He testified that because he was the sole patrol officer on duty at the police department that day — as was the case "60 percent of the work week or so" — he was unable to contact Meekins or otherwise investigate George's complaint, other than to ask Oberlin Police Detective Jessica Beyer, who was more knowledgeable regarding electronic evidence, to explain"spoofing" to him. Later that afternoon, Officer Sustarsic executed an affidavit

requesting an arrest warrant and complaints charging Meekins with one count of domestic violence in violation of R.C. 2919.25(C) and two counts of aggravated menacing in violation of R.C. 2903.21(A). The following morning, the affidavit and complaints were filed with the Oberlin Municipal Court and the court issued a warrant for Meekins' arrest. The Oberlin Municipal Court also granted George's request for an ex parte domestic violence temporary protection order. No one from the Oberlin Police Department attempted to contact Meekins or in any way investigate George's claims before a warrant was issued for his arrest.

{¶9} On March 25, 2016, Meekins was arrested at his workplace, the Ritz Carlton, in Cleveland, Ohio and taken to the Lorain County jail. At his arraignment two days later, Meekins pled not guilty to the charges. He denied sending any threatening texts to George and provided the prosecutor with a copy of the January 31, 2016 expert report. On March 29, 2016, Meekins was released with a GMS monitoring device and was barred from entering the city of Oberlin.

{¶10} On April 7, 2016, George again appeared at the Oberlin Police Department and alleged that Meekins had violated the protection order she had obtained on March 25, 2016. Detective Beyer took the report. Detective Beyer contacted Meekins who denied having any contact with George. The Oberlin Police Department subpoenaed Meekins' and George's cell phone records and took Meekins' cell phone for safekeeping, noting that George was not to be made aware that Meekins had turned over his cell phone to the police. On May 3, 2016, Detective Beyer sent a report to the prosecutor detailing the

results of her review of the subpoenaed records. She noted that George's cell phone records showed more calls between George and Meekins than Meekins' cell phone records reflected and that their cell service provider had advised Beyer that this was because the calls were "spoofed" to make it appear as if the calls were coming from Meekins when, in fact, they did not originate from his phone. Beyer also noted that George had been asked several times to allow her phone to be forensically examined but that she refused to consent to such a search.

{¶11} The following day, the city prosecutor filed a motion to dismiss the charges against Meekins, asserting that "there is substantial doubt about whether the defendant was the author of the threatening texts which were the basis of the pending charges." The prosecutor detailed the facts giving rise to the "uncertainty" and stated that, given this uncertainty, the city did not wish to pursue the charges at this time. The prosecutor indicated, however, that "[further evidence or investigation may clarify the facts giving rise to the complaints and further action may be warranted." The court granted leave to dismiss the charges and the charges were dismissed.

{¶12} On September 22, 2016, Meekins filed a complaint against the city of Oberlin and various John Doe defendants, i.e., "individuals and police officers with the Oberlin Police Department whose names and addresses are currently unknown," asserting claims of false arrest/imprisonment (Count 1), violation of 42 U.S.C. 1983— false arrest/imprisonment in violation of the Fourth Amendment (Count 2), violation of 42 U.S.C. 1983— malicious prosecution in violation of the Fourth Amendment (Count 3),

violation of 42 U.S.C. 1983 – customs and policies causing constitutional violations and ratification (Count 4) and battery (Count 5) against the defendants.

{¶13} Oberlin filed an answer denying Meekins' allegations and asserting various affirmative defenses, including failure to state a claim upon which relief may be granted, failure to name a necessary or indispensable party pursuant to Civ.R. 19 or 19.1, statutory immunity and qualified immunity.

{¶14} On May 26, 2017, Oberlin filed a motion to dismiss Meekins' complaint for failure to join George, whom it contended was an indispensable party under Civ.R. 19(A). Oberlin asserted that George's presence was "needed for a determination of the entire controversy" because the "gravamen" of Meekins' complaint "is that he suffered personal injury as a result of Kimberlee George."

{¶15} Oberlin also filed a motion for summary judgment. In its motion for summary judgment, Oberlin argued that it was entitled to summary judgment on Counts 1, 3[1] and 5 of Meekins' complaint (Meekins' claims for false arrest/imprisonment, malicious prosecution and battery) on grounds of "governmental immunity" pursuant to R.C. Chapter 2744. Oberlin also argued that it was entitled to summary judgment on Counts 1, 2, 3 and 4 of his complaint because Meekins' arrest was based on a warrant issued by the Oberlin Municipal Court, there was probable cause for his prosecution and

[1]Although Oberlin described Count 3 of Meekins' complaint as a state-law claim for malicious prosecution in its summary judgment motion, in fact, Count 3 was a claim for "violation of 42 U.S.C. § 1983 — malicious prosecution in violation of the Fourth Amendment."

Meekins had failed to identify any "official [municipal] policy" that caused a deprivation of his constitutional rights.

{¶16} Meekins opposed the motions. Meekins argued that Oberlin's motion to dismiss should be denied because it was filed after Oberlin filed its answer and Oberlin had not established that George was an indispensable party to the action. With respect to Oberlin's summary judgment motion, Meekins argued that statutory political subdivision immunity did not apply to Count 3 of his complaint because it involved an alleged violation of his constitutional rights pursuant to 42 U.S.C. 1983. Meekins also argued that summary judgment was improper as to his Section 1983 claims because the arrest warrant was based on false or misleading statements or omissions and was, therefore, void ab initio, genuine issues of material fact existed as to whether there was probable cause for Meekins' arrest and criminal prosecution and evidence of the Oberlin Police Department's understaffing, lack of training and inadequate investigative policies and procedures created genuine issues of material fact regarding "the customs [Oberlin] tolerated and endorsed" and Meekins' entitlement to relief under 42 U.S.C. 1983.

{¶17} On July 26, 2017, the trial court denied Oberlin's motion to dismiss and granted its motion for summary judgment. The trial court indicated that Oberlin was "granted political subdivision immunity pursuant to R.C. 2744.03" and that "[a]ccordingly, defendant's motion for summary judgment is hereby granted as to City of Oberlin on all claims."

{¶18} Meekins settled his claims against the "John Doe defendants" and, on July 28, 2017, voluntarily dismissed his claims against those defendants with prejudice.

{¶19} Meekins thereafter appealed, raising the following assignment of error for review:

> The trial court erred in granting summary judgment on the basis of Chapter 2744 of the Ohio Revised Code to Appellee City of Oberlin on Plaintiff's claims brought under 42 U.S.C. 1983.

Oberlin cross-appealed, raising the following assignment of error for review:

> The trial court erred in denying the City of Oberlin's Motion to Dismiss because Kimberlee George is a necessary party.

Law and Analysis

Summary Judgment

{¶20} Meekins contends that the trial court erred in granting summary judgment in favor of Oberlin based on statutory immunity grounds as to Counts 2-4 of his complaint, i.e., his Section 1983 claims, because statutory political subdivision immunity does not apply to such claims.[2] We agree.

Political Subdivision Immunity

{¶21} R.C. Chapter 2744 governs political subdivision immunity. Political subdivisions, like Oberlin, generally receive immunity from civil suits "for injury * * * or

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[2] With respect to Counts 1 and 5 of his complaint, Meekins contends that summary judgment should not have been entered in favor of Oberlin on those counts because they were not brought against Oberlin but against the "Arresting Officers" — identified in the complaint as John Does 1-3. However, in his prayer for relief, Meekins requested that judgment be entered as to Counts 1 and 5 against "Defendants" — just as he does for Counts 2-4. Accordingly, we find no error in the trial court granting summary judgment in Oberlin's favor as to those counts.

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." *See* R.C. 2744.02(A). However, several exceptions to this general grant of immunity exist, including for "[c]ivil claims based upon alleged violations of the constitution or statutes of the United States." R.C. 2744.09(E). This case is a civil action and the claims at issue are based on alleged violations of the Fourth Amendment pursuant to a federal statute, 42 U.S.C. 1983. Thus, sovereign immunity under R.C. Chapter 2744 does not preclude Meekins' Section 1983 claims. R.C. 2744.09(E); *see also Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522, ¶ 16, 31; *Leath v. Cleveland*, 8th Dist. Cuyahoga No. 102715, 2016-Ohio-105, ¶ 8 ("Political subdivision immunity does not apply to constitutional claims. * * * Therefore, these claims are examined outside the immunity context."); *Chaney v. Norwood*, 189 Ohio App.3d 124, 2010-Ohio-3434, 937 N.E.2d 634, ¶ 8 (1st Dist.) (R.C. 2744.09(E) "clearly exempts all claims for alleged violations of federal statutes and the United States Constitution from a defense of immunity."); *Workman v. Franklin Cty.*, 10th Dist. Franklin No. 00AP-1449, 2001 Ohio App. LEXIS 3818, 21 (Aug. 28, 2001) ("The immunities found within R.C. Chapter 2744 do not apply to Section 1983 actions[.]"). Although the trial court did not err in granting summary judgment in favor of Oberlin on Meekins' state-law claims (Counts 1 and 5 of his complaint) based on political subdivision immunity, it erred in awarding summary

judgment to Oberlin on Counts 2, 3 and 4 of Meekins' complaint — i.e., Meekins' Section 1983 claims — on that basis.

Oberlin's Alternative Arguments for Summary Judgment

{¶22} Despite the trial court's error,[3] Oberlin urges this court to affirm the trial court's decision granting summary judgment on all claims, asserting that although it was not entitled to summary judgment on Meekins' Section 1983 claims for the reason stated by the trial court, it was entitled to summary judgment on those claims on alternative grounds.

{¶23} Oberlin contends that it is entitled to summary judgment on Meekins' Section 1983 claims because: (1) Meekins' arrest was based on an`arrest warrant issued by the Oberlin Municipal Court, which is a "complete defense" to Meekins' claims; (2) a claim of false imprisonment cannot be brought against a municipality; (3) there was probable cause for Meekins' criminal prosecution; and (4) Meekins presented no evidence that any "official policy" of Oberlin caused the deprivation of his constitutional rights. Although Oberlin presented these arguments to the trial court in its summary judgment motion, it is clear from the trial court's order that, because of its belief that Oberlin was entitled to summary judgment on all Meekins' claims on immunity grounds, it did not consider them.

[3]At oral argument, Oberlin conceded that political subdivision immunity under R.C. Chapter 2744 did not bar Meekins' claims under 42 U.S.C. 1983.

{¶24} Even assuming, as Oberlin suggests, that we had the power to affirm the trial court's decision on one or more of these grounds based on our own, independent review of the summary judgment evidence, we decline to do so in this case. It is clear from the record that the trial court never reviewed the evidence presented by the parties on summary judgment and never considered whether there were genuine issues of material fact with respect to Oberlin's liability under 42 U.S.C. 1983. The only issue considered by the trial court in ruling on Oberlin's motion for summary judgment was whether Meekins' claims were barred by political subdivision immunity under R.C. Chapter 2744 — a legal issue that did not involve review and consideration of the evidence submitted by the parties on summary judgment.

{¶25} Appellate de novo summary judgment review does not mean that the trial court need not first rule on the issues presented in a party's motion for summary judgment. As the Ohio Supreme Court explained in *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 360, 604 N.E.2d 138 (1992), "[T]he trial court's function cannot be replaced by an 'independent' review of an appellate court." "A reviewing court, even though it must conduct its own examination of the record, has a different focus than the trial court. If the trial court does not consider all the evidence before it, an appellate court does not sit as a reviewing court, but, in effect, becomes a trial court." *Id.* (where trial court made ruling on summary judgment based solely on oral hearing and did not review the parties' briefs and evidence before granting summary judgment, appellate court's de novo review did not fix the error because "the trial court's function cannot be replaced by an

'independent' review of an appellate court"). *See also Orvets v. Natl. City Bank*, 131 Ohio App.3d 180, 192-194, 722 N.E.2d 114 (9th Dist. 1999) (concluding that it would be "inappropriate" for appellate court to consider evidence presented by appellant to pass upon alternative grounds urged by appellant in support of his motion for summary judgment without the trial court first doing so); *Bohl v. Travelers Ins. Group*, 4th Dist. Washington No. 03CA68, 2005-Ohio-963, ¶ 21-23 (declining to address alternative bases upon which summary judgment could be granted to defendant that would were not addressed by trial court to avoid "step[ping] outside our role as a reviewing court and into the territory of a trial court"); *Bartkowiak v. Pillsbury Co.*, 4th Dist. Jackson No. 99 CA 844, 2000 Ohio App. LEXIS 86, 16-18 (Jan. 11, 2000) (where trial court did not consider whether summary judgment was appropriate on appellant's intentional infliction of emotional distress claim because it incorrectly determined that appellant could not maintain a cause of action for intentional infliction of emotional distress, the appellate court "may not consider the issue"; "[a]lthough an appellate court reviews a trial court's decision regarding a summary judgment motion de novo, an appellate court should not usurp the trial court's role by making independent factual determinations and conclusions of law. Rather, as an appellate court, we must review a trial court's judgment."); *B.F. Goodrich Co. v. Commercial Union Ins.*, 9th Dist. Summit No. 20936, 2002-Ohio-5033, ¶ 38-44 (refusing to review alternate grounds for summary judgment where the record "affirmatively demonstrate[d]" that the trial court did not consider them); *Yoskey v. Eric Petroleum Corp.*, 7th Dist. Columbiana No. 13CO42, 2014-Ohio-3790, ¶ 40 ("[I]f a party

raises ten arguments in a summary judgment motion, the trial court adopts the first one, and the appellant assigns that position as error, the appellee cannot require this court to address the nine other arguments by arguing that the judgment can be affirmed on other grounds that the trial court never reached."); *Guappone v. Enviro-Cote, Inc.*, 9th Dist. Summit No. 24718, 2009-Ohio-5540, ¶ 11-13 (although review is de novo, appellate court is "precluded from considering * * * motions for summary judgment in the first instance" as it would "effectively depriv[e] the non-prevailing party of appellate review").

{¶26} In this case, we believe the trial court — and not this court — should determine, in the first instance, whether genuine issues of material fact exist with respect to Oberlin's liability under 42 U.S.C. 1983. Meekins' first assignment of error is sustained.

Failure to Join Indispensable Party

{¶27} In its cross-appeal, Oberlin contends that the trial court erred in denying its motion to dismiss because George is a necessary and indispensable party under Civ.R. 19.

{¶28} Civ.R. 19 requires a person who is subject to service of process to be joined as a party if:

> (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (a) as a practical matter impair or impede his ability to protect that interest or (b)

> leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest, or (3) he has an interest relating to the subject of the action as an assignor, assignee, subrogor, or subrogee.

Civ.R. 19(A). If such a person cannot be made a party, Civ.R. 19(B) provides that "the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable." The factors to be considered in determining whether a party is indispensable, include: to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; the extent to which the prejudice can be lessened or avoided; whether a judgment rendered in the person's absence will be adequate; and whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Civ.R. 19(B).

{¶29} Oberlin has not shown that George is an indispensable party under Civ.R. 19. Oberlin asserts that George is a necessary and indispensable party because "[t]he gravamen of Plaintiff's Complaint is that he suffered personal injury as a result of Kimberlee George. Therefore, Ms. George is a necessary party to the case at bar and her presence is needed for a determination of the entire controversy." However, this lawsuit involves Oberlin's liability for its own actions and inaction — not those of George. At issue in this case is Oberlin's policies and practices and its alleged failure to properly investigate George's claims, leading to Meekins' arrest and imprisonment.

{¶30} Oberlin has not shown or explained how or why it believes George is a necessary party to this action — much less an indispensable party. Based on the record before us, it appears that complete relief can be accorded the parties to this action without Meekins joining George. George has no interest in the subject matter of this action, and she is not an assignor, assignee, subrogor or subrogee. And there is nothing in the record to suggest that anyone is at risk of incurring multiple or otherwise inconsistent obligations or would otherwise be prejudiced by George's absence from the case.

{¶31} Accordingly, the trial court did not err in denying Oberlin's motion to dismiss. Oberlin's cross-assignment of error is overruled.

{¶32} We affirm the trial court's entry of summary judgment in favor of Oberlin as to Meekins' state-law claims (Counts 1 and 5), reverse the trial court's entry of summary judgment in favor of Oberlin as to Meekins' Section 1983 claims (Counts 2, 3 and 4) and remand the case for further proceedings consistent with this opinion.

{¶33} Judgment affirmed in part, reversed in part and remanded.

It is ordered that appellee and appellants share the 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.

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EILEEN A. GALLAGHER, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and
KATHLEEN ANN KEOUGH, J. CONCUR