IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs July 1, 2020

GENEVA LAWSON ET AL. V. MARYVILLE CITY SCHOOLS

Appeal from the Circuit Court for Blount County
No. L-20123 David R. Duggan, Judge

No. E2019-02194-COA-R3-CV

This is a Tennessee Governmental Tort Liability action for personal injuries resulting from a trip and fall on the premises of a public school that was owned and operated by Maryville City Schools. The complaint alleged, in pertinent part, that the plaintiff tripped and fell near the entrance to the Maryville High School on a section of the school's sidewalk that was deteriorated, the condition of which the defendant knew or should have known. The defendant filed a motion to dismiss the complaint pursuant to Tenn. R. Civ. P. 12.02(6) for failure to state a claim upon which relief could be granted, arguing it was "immune from suit pursuant to the public duty doctrine." Finding the public duty doctrine applied and the defendant was immune, the trial court dismissed the complaint. This appeal followed. We have determined that the facts alleged in the complaint do not pertain to or give rise to a defense based on the public duty doctrine. Further, accepting the plaintiffs' factual allegations as true—as we are required to do at this stage in the proceedings—we have determined that the complaint alleged sufficient facts to survive a Rule 12.02(6) motion to dismiss for failure to state a claim. Accordingly, the judgment of the trial court is vacated, and this matter is remanded for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated and Remanded

FRANK G. CLEMENT JR., P.J., M.S., delivered the opinion of the Court, in which JOHN W. MCCLARTY and ARNOLD B. GOLDIN, JJ., joined.

William Sivyer, Knoxville, Tennessee, for the appellants, Geneva Lawson and David Lawson.

Jonathan Swann Taylor and Caitlin C. Burchette, Knoxville, Tennessee, for the appellee, Maryville City Schools.

OPINION

While taking her grandson to school, Geneva Lawson tripped and fell on a section of allegedly deteriorated sidewalk and sustained injuries. Mrs. Lawson and her husband, David Lawson (collectively, "Plaintiffs"), sued Maryville City Schools ("Defendant"), asserting negligence claims for premises liability and loss of consortium.

The complaint alleges, in pertinent part, that Plaintiffs' claims arise from an injury that "occurred on a premises owned and controlled" by Defendant, that there was "a deteriorated sidewalk on the premises of Maryville High School . . . which constituted a dangerous condition," and that Defendant "knew or should have known of the dangerous condition on its premises."[1] It is also alleged that Mrs. Lawson suffered multiple, severe, and permanent injuries as a result of the dangerous condition.

Defendant filed a motion to dismiss pursuant to Tenn. R. Civ. P. 12.02(6) for failure to state a claim upon which relief can be granted, arguing that it was "immune from suit pursuant to the public duty doctrine."[2] At the motion hearing, Plaintiffs' counsel argued that the public duty doctrine did not apply to the facts alleged in the complaint. Counsel argued that the public duty doctrine preceded the enactment of the GTLA; thus, the GTLA applied, not the public duty doctrine. Counsel further argued:

> I would argue that it would make a very slippery slope to start applying the Public Duty Doctrine in cases of slip and falls. You're basically stating that anytime somebody comes on the premises of a governmental entity, they have the right to say, well, the general public comes here; as such, we don't owe you a duty. And that's not good for public—for the general public with regards to returning to those places in hopes of safety.

After hearing from counsel, the trial court found the public duty doctrine immunized Defendant because the duty to maintain the sidewalk in question was owed to the public at large. As the court explained in its oral ruling, it relied on the description of the public duty doctrine in *Kemper v. Baker*, No. M2011-00407-COA-R3-CV, 2012 WL 1388371 (Tenn. Ct. App. Apr. 19, 2012):

> [*Kemper v. Baker*] was an action against the city and a city official following a construction accident in which an exterior wall of a building collapsed

[1] Because the complaint was dismissed pursuant to Tenn. R. Civ. P. 12.02(6) for failure to state a claim upon which relief can be granted, the material facts stated herein are taken from the complaint.

[2] Defendant also filed an Answer in which it asserted "any and all governmental immunities provided for in the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-101 *et seq*., as such defenses may prove applicable under the facts of this case.… and in particular, Tenn. Code Ann. § 29-20-205." Defendant acknowledged it was "the proper party in this action as Maryville City Schools is its own governmental entity[.]"

causing serious injuries to one of the plaintiffs and the death of another plaintiff. The building was being demolished and the plaintiffs were employed by a private company that was to disconnect gas utilities on the privately-owned building. And the plaintiffs claimed in part that the collapse was caused by failure of the city and the city manager to enforce certain [Occupational Safety and Health Administration] regulations and provisions of the Municipal Building Code. The Court [in *Kemper v. Baker*] held that . . . the city was immune from liability under the public duty doctrine:

> Succinctly stated, the public duty doctrine provides that private citizens cannot maintain an action against public officials or entities unless they are able to allege a special duty not owed to the public generally. The special duty exception applies where a special relationship exists between the plaintiff and the public employee, which gives rise to a special duty that is more particular than the duty owed . . . to the public at large.

[2012 WL 1388371, at *5 (citations omitted).]

. . . . [H]ere the Court will find, in this case, that the duty to maintain a public sidewalk is a duty owed to the public at large, to the general public. There is no reason to know that a particular victim would be in danger, no reason to know that a particular threat would be posed to a specific individual.

There was no . . . duty owed to this victim—or rather this injured person—pertaining to a partially deteriorated sidewalk. The duty to maintain the sidewalk is a public duty owed to the public at large. And the Court does not find that there is any special duty exception that applies, because those are: . . . (1) where a public official affirmatively undertakes to protect the plaintiff and the plaintiff relies on the undertaking, or (2) a statute specifically provides for a cause of action against the official or governmental entity for injuries resulting to a particular class of individuals of which the plaintiff is a member from failure to enforce certain laws, or (3) where a plaintiff alleges a cause of action involving intent, malice or reckless conduct.

Because Plaintiffs failed to allege a special relationship between the plaintiff and public entity that gave "rise to a special duty that is more particular than the duty owed to the public at large," the trial court found there were no exceptions to prevent the application of the public duty doctrine and granted Defendant's motion.

This appeal followed.

STANDARD OF REVIEW

A trial court's decision to grant a Rule 12.02(6) motion to dismiss is a question of law that we review de novo with no presumption of correctness. *See Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011). We will uphold the decision "only when it appears that the plaintiff can prove no set of facts in support of a claim that will entitle him or her to relief." *Smith v. Benihana Nat'l Corp.*, 592 S.W.3d 864, 870 (Tenn. Ct. App. 2019) (citing *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003)).

When making our determination, "we are limited to an examination of the complaint alone." *Wells Fargo Bank, N.A. v. Dorris*, 556 S.W.3d 745, 756 (Tenn. Ct. App. 2017) (citing *Wolcotts Fin. Serv., Inc. v. McReynolds*, 807 S.W.2d 708, 710 (Tenn. Ct. App. 1990)). Moreover, we "do not consider the strength of the plaintiff's evidence; thus, all factual allegations in the complaint are accepted as true and construed in favor of the plaintiff." *Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 308 (Tenn. 2012).

ANALYSIS

This court is required to construe the facts alleged in the complaint as true for purposes of the motion to dismiss to determine whether Plaintiffs stated a claim for which relief could be granted. *See Smith*, 592 S.W.3d at 870. However, we are "not required to accept as true assertions that are merely legal arguments or 'legal conclusions' couched as facts." *Webb*, 346 S.W.3d at 427. In considering a motion to dismiss, courts "must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences." *Id.* at 426 (quoting *Tigg v. Pirelli Tire Corp.,* 232 S.W.3d 28, 31–32 (Tenn. 2007)). "Under Tennessee Rule of Civil Procedure 8, Tennessee follows a liberal notice pleading standard, which recognizes that the primary purpose of pleadings is to provide notice of the issues presented to the opposing party and court." *Id*. (internal citation omitted).

"To survive a motion to dismiss, a complaint must not be entirely devoid of factual allegations." *Id*. Our courts have interpreted Tenn. R. Civ. P. 8.01 as requiring "a plaintiff to state 'the facts upon which a claim for relief is founded.'" *Id*. (quoting *Smith v. Lincoln Brass Works, Inc.*, 712 S.W.2d 470, 471 (Tenn. 1986)). While "[a] complaint 'need not contain detailed allegations of all the facts giving rise to the claim,' . . . it 'must contain sufficient factual allegations to articulate a claim for relief.'" *Id*. (quoting *Abshure v. Methodist Healthcare-Memphis Hosps.,* 325 S.W.3d 98, 103 (Tenn. 2010)). "The facts pleaded, and the inferences reasonably drawn from these facts, must raise the pleader's right to relief beyond the speculative level." *Id.* (quoting *Abshure*, 325 S.W.3d at 104). Thus,"[w]hile a complaint in a tort action need not contain in minute detail the facts that give rise to the claim, *it must contain direct allegations on every material point* necessary to sustain a recovery on any legal theory, even though it may not be the theory

suggested . . . by the pleader, *or contain allegations from which an inference may fairly be drawn that evidence on these material points will be introduced at trial.*" *Id*. (emphasis in original) (quoting *Leach v. Taylor*, 124 S.W.3d at 92 (Tenn. 2004))

"Both the GTLA and the public duty doctrine are affirmative defenses." *Chase v. City of Memphis*, 971 S.W.2d 380, 385 (Tenn. 1998). In our analysis of a case that purportedly involves both defenses, we are to first look to the GTLA. *Id.* "If immunity is found under the GTLA, a court need not inquire as to whether the public duty doctrine also provides immunity." *Id*. "If, however, the GTLA does not provide immunity, courts may look to the general rule of immunity under the public duty doctrine." *Id.*

I. THE GOVERNMENTAL TORT LIABILITY ACT

The GTLA is premised on the constitutional rule that suits against the State and governmental entities "may only be brought in such manner and 'in such courts as the Legislature may by law direct.'" *Vaughn v. City of Tullahoma*, No. M2015-02441-COA-R3-CV, 2017 WL 3149602, at *1 (Tenn. Ct. App. July 21, 2017) (quoting Tenn. Const. art. I, § 17). Provisions of the GTLA are subject to strict construction because the Act is in contravention of the common-law doctrine of sovereign immunity. *Moreno v. City of Clarksville*, 479 S.W.3d 795, 809–10 (Tenn. 2015). Therefore, in cases brought pursuant to the GTLA, "[b]efore proceeding in an action against a governmental entity, the threshold issue of waiver of governmental immunity must be addressed." *Brown v. Hamilton Cty*., 126 S.W.3d 43, 46 (Tenn. Ct. App. 2003).

Relevant to this case, Tenn. Code Ann. § 29-20-203 removes immunity in the following circumstance:

> (a) Immunity from suit of a governmental entity is removed for any injury caused by *a defective, unsafe, or dangerous condition of any* street, alley, *sidewalk* or highway, *owned and controlled by such governmental entity*. "Street" or "highway" includes traffic control devises thereon.
>
> (b) This section shall not apply unless constructive and/or actual notice to the governmental entity of such condition be alleged and proved in addition to the procedural notice required by § 29-20-302 [repealed].

(Emphasis added).

Thus, the essential elements to removing immunity and stating a claim against a governmental entity under § 29-20-203 are: (1) the governmental entity owns or controls the location or instrumentality alleged to have caused the injury; (2) the location or instrumentality is defective, unsafe, or dangerous; and (3) the governmental entity has constructive or actual notice of the condition. *Graham v. Bradley County*, No. E2012-

02369-COA-R3-CV, 2013 WL 5234240, *7 (Tenn. Ct. App. Sept. 17, 2013) (citing *Burgess v. Harley*, 934 S.W.2d 58, 63 (Tenn. Ct. App. 1996)).

The complaint at issue here alleged sufficient facts to articulate a claim for relief, including that the school "is operated and controlled by Defendant;" "there was a deteriorated sidewalk on the premises of Maryville High School, which constituted a dangerous condition;" and Defendant "knew or should have known of the dangerous condition on its premises." For these reasons, immunity is removed from Plaintiffs' claim of premises liability.

Because we have determined that the GTLA does not provide immunity, we shall now consider the defendant's claim of immunity under the public duty doctrine. *See Chase*, 971 S.W.2d at 385 ("If . . . the GTLA does not provide immunity, courts may look to the general rule of immunity under the public duty doctrine.").

II. THE PUBLIC DUTY DOCTRINE

"The public duty doctrine originated at common-law and shields a public employee from suits for injuries that are caused by the public employee's breach of a duty owed to the public at large." *Ezell v. Cockrell*, 902 S.W.2d 394, 397 (Tenn. 1995). It is undisputed that the doctrine survived the enactment of the GTLA. *See id.* at 404.

As this court has previously explained, the public duty doctrine is based on several principles:

> One public policy consideration advanced is that individuals, juries, and courts are ill-equipped to judge governmental decisions as to how specific community resources should be or should have been allocated to protect individual members of the public. *Ezell*, 902 S.W.2d at 397–98 (citing *Morgan v. District of Columbia*, 468 A.2d 1306, 1311 (D.C. 1983)). A second factor favoring application of the public duty doctrine is the depletion of municipal resources that would result if every oversight or omission of a police official resulted in civil liability. *Ezell*, 902 S.W.2d at 397–98. A third factor justifying application of the public duty doctrine involves recognition of the fact that, without the application of such doctrine, police officers continually would be faced with the precarious dilemma of deciding between whether to avoid liability for personal injury by arresting all persons who pose any potential threat to the public or whether to avoid liability for false imprisonment by not arresting those persons. *Id.* The public duty doctrine "serves the important purpose of preventing excessive court intervention into the governmental process by protecting the exercise of law enforcement discretion." *Id.* at 400–01; *see also State v. Jefferson*, 529 S.W.2d 674, 689

> (Tenn. 1975) (stating that it is essential to protection of society that wide discretion be vested in officers chosen to enforce our laws).

Eldridge v. City of Trenton, No. 02A01-9503-CV-00041, 1997 WL 527303, at *4 (Tenn. Ct. App. Aug. 26, 1997).

In *Ezell v. Cockrell*, our Supreme Court recognized that a "special duty" exception exists to the immunity enjoyed by local governmental entities under the public duty doctrine. 902 S.W.2d at 402. The Court also explained that the GTLA waived immunity for certain activities protected at common-law by the public duty doctrine:

> Although, as the plaintiff points out, the Legislature has waived immunity in the Act for some activities that were protected at common law by the public duty doctrine, many of the governmental activities traditionally shielded by the public duty doctrine are expressly excepted from the limited waiver of immunity for negligent acts or omissions of governmental employees, under which the plaintiff brought this lawsuit. *See* Tenn. Code Ann. § 29-20-205(1) (exercise or performance of a discretionary function); [-]205(3) (issuance of licenses); [-]205(4) (failure to inspect); -205(7) (civil unrest); and [-]205(8) (tax collection). Accordingly, we are not persuaded that the Tennessee Governmental Tort Liability Act, which actually reiterates and extends the rule of governmental immunity, abolished, or was intended to abolish, the longstanding common-law public duty doctrine.

Id. at 400 (footnotes omitted).

Although the public duty doctrine survived the enactment of the GTLA, § 29-20-203 expressly waives immunity for, *inter alia*, "any injury caused by *a defective, unsafe, or dangerous condition of any . . . sidewalk . . . , owned and controlled by such governmental entity*," the condition of which the governmental entity had constructive or actual notice. Thus, but for the enactment of § 29-20-203, a municipality such as Maryville School System would be exempt pursuant to the public duty doctrine for such a claim. *See id.* Accordingly, with the enactment of § 29-20-203, the General Assembly expressed its clear intent to limit the scope of the public duty doctrine by removing immunity for certain claims, including, specifically, the claim at issue here. If we were to allow the public duty doctrine to trump § 29-20-203, as Defendant argues, this would nullify the clear intent of the General Assembly and render its enactment useless and an absurdity.

"The rules of statutory construction permit the court to employ presumptions with regard to the legislative process." *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010). Moreover, the courts "presume that the General Assembly did not intend to enact a useless statute and that the General Assembly 'did not intend an absurdity.'" *Id.* (quoting *Fletcher v. State*, 951 S.W.2d 378, 382 (Tenn. 1997)) (internal citation omitted). For

example, with regard to the General Assembly's knowledge of the existing law affecting the subject matter of the legislation, we presume that the General Assembly knows "the state of the law at the time it passes legislation." *Murfreesboro Med. Clinic, P.A. v. Udom*, 166 S.W.3d 674, 683 (Tenn. 2005); *see* State *v. Mixon*, 983 S.W.2d 661, 669 (Tenn. 1999); *Cronin v. Howe*, 906 S.W.2d 910, 912 (Tenn. 1995). Such presumptions enable the court to construe a statute in a way that avoids conflict and facilitates the harmonious operation of the law. *See Frazier v. E. Tenn. Baptist Hosp., Inc.*, 55 S.W.3d 925, 928 (Tenn. 2001); *In re Audrey S.*,182 S.W.3d 838, 869 (Tenn. Ct. App. 2005).

Here, we presume the General Assembly knew that the public duty doctrine provided immunity for the breach of a duty owed to the public at large when it passed Tenn. Code Ann. § 29-20-203. Yet, all claims arising under § 29-20-203 necessarily stem from a breach of a duty owed to the public at large rather than a duty owed to a particular individual. To conclude that the public duty doctrine overrides the express intent of the General Assembly to remove immunity for "any injury caused by *a defective, unsafe, or dangerous condition of any . . . sidewalk . . . , owned and controlled by such governmental entity*" would render Tenn. Code Ann. § 29-20-203 useless and a nullity.

As such, we conclude that the application of the public duty doctrine would be in direct conflict with the General Assembly's express intent as set forth in Tenn. Code Ann. § 29-20-203. For these reasons, we hold that the public duty doctrine does not apply to the claims as stated in the complaint that come under the purview of § 29-20-203.

IN CONCLUSION

Therefore, the trial court's order is reversed, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the Maryville City Schools.

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FRANK G. CLEMENT JR., P.J., M.S.