

2020 WL 9439519 (Ohio Com.Pl.) (Trial Order)
Court of Common Pleas of Ohio.
Hamilton County

Ron PLUSH et al, Plaintiff,
v.
CITY OF CINCINNATI et al., Defendants.

No. A1903752.
January 22, 2020.

Entry Overruling Defendant's Motion to Dismiss

Robert P. Ruehlman, Judge.

*1 This matter is before the Court on Defendant's **motion to dismiss**. The Court, having read the submitted briefs and in full consideration of the arguments finds said motion not well taken and **DENIES** the same.

A motion to dismiss may only be granted when it is determined no set of facts can be presented as to allow for the Plaintiff some entitlement of relief. It is not this Court's job to determine the credibility of the facts nor the culpability of the acts. Therefore, this Court finds that there are a set of facts presented that may allow for relief for the Plaintiff.

It is not disputed that a political subdivision or its employee is ordinarily immune from suit when the acts are within the scope of the job under Ohio Revised Code Chapter 2744. To grant a motion to dismiss over political subdivision immunity a defendant must show that the immunity is apparent in the complaint on its face. *Molnar v. City of Green*, 2019-Ohio-3083, (2019). This is the essence of a motion to dismiss. Only the complaint and the facts alleged may be scrutinized as to determine whether there are no facts that would lead to relief.

Individual immunity is not examined under the same standard as political subdivision immunity. Employees are considered immune unless (a) the employee acted manifestly outside the scope of the employee's official responsibilities, (b) the employee's acts or omissions were with malicious purpose, in bad faith, or in wanton or reckless manner, or (c) if civil liability is expressly imposed upon the employee by a section of the Revised Code. O.R.C. 2744.03(A)(6). This Court finds that whether the employee acted outside the scope of official responsibilities and the culpability of the acts is an issue that must be left to the trier of fact. Based on the complaint, facts have been alleged that have the potential for relief for the Plaintiff under O.R.C. 2744.03(A)(6).

Based on the reasons stated, a Plaintiff is not required to combat all the possible exceptions of the potential immunities in the complaint. *Molnar v. City of Green*, 2019-Ohio-3083, (2019). This Court finds that Defendants have not conclusively presented that the immunity they seek is apparent based solely on the complaint. There are facts that have been presented to overcome political subdivision immunity and individual immunity. This Court finds that to continue the analysis to whether the exceptions apply to this case would be premature. Therefore, the motion to dismiss is hereby overruled.

IT IS SO ORDERED.

1-22-20

Date

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JUDGE ROBERT P. RUEHLMAN

