

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

MARVIN HOLMES)	
)	
Plaintiff,)	
v.)	
)	
DETECTIVE GREGORY D'ELIA,)	C.A. No. N13C-12-185 MMJ
)	
Defendant.)	
)	

Submitted: February 19, 2015
Decided: April 20, 2015

Upon Defendant's Motion to Dismiss
GRANTED

MEMORANDUM OPINION

Marvin Holmes, *Pro Se*.

Rochelle Gumapac, Esquire, White and Williams LLP, Attorney for Defendant.

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

This litigation arises from the arrest of Defendant Marvin Holmes (“Holmes”) on January 28, 2012. Holmes filed a Complaint on December 23, 2013, alleging that Detective Gregory D’Elia (“D’Elia”) negligently investigated and charged Holmes with the rape and strangulation of Heidi Schwigniffer (“Schwigniffer”) in late 2011 and early 2012. Holmes seeks to recover monetary damages from D’Elia for the physical and mental distress Holmes allegedly has suffered as a result of being charged with rape and strangulation.

On February 12, 2014, D’Elia filed a Motion to Dismiss on two grounds: (1) under Superior Court Civil Rule 4(f) claiming insufficiency of process; and (2) under Superior Court Civil Rule 12(b)(6) for failure to state a claim on which relief can be granted.

On March 17, 2014, the Court issued an Order that: (1) denied D’Elia’s Motion to Dismiss for insufficiency of process; and (2) found that D’Elia’s Motion to Dismiss for failure to state a claim was not yet ripe for judicial determination. Under the March 17, 2014 Order, Holmes was given an additional 60 days to respond to the merits of D’Elia’s immunity defense.

Holmes subsequently filed several letters, the last of which was received on September 23, 2014. On November 25, 2014, the Court permitted D’Elia to file a Reply in Support of the Motion to Dismiss. D’Elia filed a Reply in Support of the

Motion to Dismiss on December 29, 2014. On February 19, 2015, Holmes filed a Response to D’Elia’s Reply in Support of the Motion to Dismiss. D’Elia’s Motion to Dismiss is now ripe for adjudication.

STANDARD OF REVIEW

When reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must determine whether the claimant “may recover under any reasonably conceivable set of circumstances susceptible of proof.”¹ The Court must accept as true all non-conclusory, well-pleaded allegations.² Every reasonable factual inference will be drawn in favor of the non-moving party.³ If the claimant may recover under that standard of review, the Court must deny the motion to dismiss.⁴

ANALYSIS

The Delaware Tort Claims Act provides state employees with qualified immunity from civil liability.⁵ The Act provides in pertinent part:

An employee may be personally liable for acts or omissions causing property damage, bodily injury or death in instances in which the governmental entity is immune under this section, but only for those acts which were not within the scope of employment or which were performed with wanton negligence or willful and malicious intent.⁶

¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

² *Id.*

³ *Wilmington Sav. Fund. Soc’y, F.S.B. v. Anderson*, 2009 WL 597268, at *2 (Del. Super.) (citing *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005)).

⁴ *Spence*, 396 A.2d at 968.

⁵ 10 *Del. C.* § 4011(c); *Parker v. Wireman*, 2012 WL 1536934, at *2 (Del. Super.).

⁶ *Id.*

Qualified immunity will apply where: “(1) the alleged act or failure to act arises out of and in connection with the performance of official duties involving the exercise of discretion; (2) the act or failure to act was done (or not done) in good faith; and (3) the act or failure to act was done without gross negligence.”⁷ To determine whether qualified immunity applies, it is first necessary to differentiate between ministerial and discretionary acts. A ministerial act is one in which the method to be implemented is dictated or mandated by certain procedures.⁸ A discretionary act is one where “there is no hard and fast rule as to [the] course of conduct that one must or must not take.”⁹ If the negligent conduct complained of involves a discretionary act by the defendant, the claim against the defendant will be barred by qualified immunity. Where discretionary acts are involved, liability will attach only when a plaintiff can show that a defendant acted in bad faith or with gross negligence.

The authority of D’Elia to arrest individuals is inherent in his job as a detective in the Newark Police Department and such an act is discretionary. Holmes contends that there was no physical evidence to justify the arrest and that D’Elia should have known that the accusations against Holmes were false. D’Elia’s investigation, which included a positive identification of Holmes as the

⁷ *J.L. v. Barnes*, 33 A.3d 902, 914 (Del. Super. 2011).

⁸ *Id.*

⁹ *Scarborough v. Alexis I. DuPont High School*, 1986 WL 10507, at *2 (Del. Super.).

attacker, and arrest of Holmes were within the scope of D'Elia's employment.

D'Elia's actions were performed in good faith and without gross negligence.

Holmes claims that he has suffered bodily injury as a result of his emotional distress. In Holmes' Response to D'Elia's Reply in Support of the Motion to Dismiss, Holmes' states: "My psychological state (caused by all that has happened to me for being charged with falsified rape charges) does affect my body . . . my body is injured every time I'm overwhelmed psychologically, depressed in the extreme about the nightmare I live." This Court has held that injury of this kind is not "bodily injury" under the Delaware Tort Claims Act.¹⁰ As such, D'Elia is not liable for negligently arresting Holmes.

CONCLUSION

The Court finds that the Delaware Tort Claims Act grants D'Elia immunity from liability. Holmes has failed to allege facts that, if taken to be true, would establish that D'Elia's discretionary acts or omissions were performed in the absence of good faith or with gross negligence.

¹⁰ *Dickerson v. Phillips*, 2012 WL 2236709, at *2 (Super. Ct.) ("[E]ven assuming that Plaintiffs' allegations of stress-induced diabetes had been properly pled, their claims would not meet the requirement of pleading "bodily injury" necessary to avoid the immunity bar under section 4011(c). Plaintiffs' allegations that their stress and anxiety caused by the defamation of character are too attenuated, and too far-fetched, to form a plausible claim that Defendants caused bodily injury to Plaintiffs by an intentional act.").

THEREFORE, Defendant Detective Gregory D'Elia's Motion to Dismiss is hereby **GRANTED**. This action is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

/s/ Mary M. Johnston

The Honorable Mary M. Johnston