

RENDERED: FEBRUARY 1, 2019; 10:00 A.M.
 NOT TO BE PUBLISHED

**Commonwealth of Kentucky
Court of Appeals**

NO. 2017-CA-000662-MR

OTIS COLLINS

APPELLANT

APPEAL FROM CARROLL CIRCUIT COURT
v. HONORABLE REBECCA LESLIE KNIGHT, JUDGE
ACTION NO. 14-CI-00077

CARROLL COUNTY
SHERIFF DEPARTMENT

APPELLEE

OPINION
AFFIRMING

*** * * *

BEFORE: ACREE, J. LAMBERT, AND MAZE, JUDGES.

MAZE, JUDGE: Otis Collins appeals from a summary judgment order of the Carroll Circuit Court dismissing his claims against the Carroll County Sheriff's Department (the CCSD). We agree with the trial court that Collins's defamation claims against the CCSD were barred by governmental immunity that has not been waived by statute. We also agree with the trial court that Collins failed to present

sufficient proof establishing claims for intentional infliction of emotional distress or negligent infliction of emotional distress. Hence, we affirm.

On June 18, 2014, Collins filed a complaint against the CCSD asserting claims for violation of KRS¹ 431.076, defamation, libel, false light, invasion of privacy, intentional infliction of emotional distress, and negligent infliction of emotional distress. The claims arose from the publication of an article on the CCSD's website after his arrest for child abuse. The article related the circumstances of Collins's arrest for child abuse on February 13, 2013, noting that several witnesses reported seeing Collins shaking his son while at a bus stop. Although Collins was charged with assault based on the incident, the charge was dismissed prior to trial.

Thereafter, Collins filed a motion pursuant to KRS 431.076 to expunge the records relating to the arrest and charge. The expungement order, which was entered on October 3, 2013, directed the CCSD, among other agencies, to expunge all records relating to the matter. The CCSD concedes that it failed to comply with the order within sixty days, but it removed the article after it was served with Collins's complaint in this action.²

¹ Kentucky Revised Statutes.

² Collins also asserted claims against the Madison Courier and Wagon Wheel Broadcasting for re-publishing the information on the CCSD's website. On September 14, 2014, the trial court dismissed the claims against the Madison Courier for failure to state a claim. However, Collins did not name the Madison Courier in his notice of appeal. Wagon Wheel Broadcasting did not

Following completion of discovery, the CCSD moved for summary judgment, which the trial court granted on March 29, 2017. The court first found that the CCSD is entitled to governmental immunity, and that such immunity has not been waived by statute. In the alternative, the court concluded that the statements in the article were not false, nor were they made in disregard of their truth or falsity. The court further found that the statements on CCSD's website were privileged under KRS 411.060. Next, the court found that KRS 431.076 does not create a private right of action for violations of the expungement order. And finally, the court found that Collins failed to state claims for intentional infliction or negligent infliction of emotional distress. Collins now appeals from this order.

The sole question presented on appeal is whether the CCSD was entitled to summary judgment as a matter of law. “[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on

file a responsive pleading to Collins’s complaint, but no judgment has been entered against Wagon Wheel. Furthermore, Collins did not name Wagon Wheel as a party to this appeal, and it appears that his claims against it remain pending before the trial court. Since there are no issues on appeal relating to these parties, we will not address these claims further.

file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR³ 56.03. “The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest*, 807 S.W.2d at 480. The trial court must examine the evidence, not to decide any issue of fact, but to discover if a real issue exists. *Id.* Since a summary judgment involves no fact-finding, this Court’s review is *de novo*, in the sense that we owe no deference to the conclusions of the trial court. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996).

As the trial court noted, the first question in this case is whether the CCSD is entitled to immunity from Collins’s tort claims. The Commonwealth and its counties are entitled to sovereign, or absolute, immunity from suit, absent an express consent or waiver. *Comair, Inc. v. Lexington-Fayette Urban County Airport Corp.*, 295 S.W.3d 91, 94 (Ky. 2009). Governmental immunity, which is derivative of sovereign immunity, applies to tort claims against qualified governmental agencies or entities. *Parking Auth. of River City, Inc. v. Bridgefield Cas. Ins. Co.*, 477 S.W.3d 598, 600 (Ky. App. 2015). The CCSD serves as the law-enforcement arm of county government, which is itself a political subdivision

³ Kentucky Rules of Civil Procedure.

of the state. *Jones v. Cross*, 260 S.W.3d 343, 345 (Ky. 2008). Consequently, the CCSD has absolute governmental immunity from tort liability absent a waiver. *Id.*

Collins argues that the immunity of the CCSD has been waived by the enactment of KRS 70.040, which provides a limited waiver of the sheriff's official immunity for the tortious acts or omissions of his deputies. *Id.* at 346. But in this case, Collins only named the CCSD as defendant, not the sheriff, his agents, or his deputies in any capacity. Furthermore, Collins does not point to any actions by the sheriff's deputies relating to the publication of the article on the CCSD's website.

Therefore, Collins's claims are not subject to the limited waiver of immunity provided by KRS 70.040. Since Collins's tort claims against the CCSD were barred by governmental immunity, we need not address whether the statements contained in the article were privileged or were otherwise not actionable. Furthermore, Collins does not challenge the trial court's dismissal of his claim for violation of KRS 431.076.

However, we agree with the trial court that Collins failed to state a cause of action for intentional infliction of emotional distress or negligent infliction of emotional distress. Collins makes no showing that the CCSD's actions were specifically intended to cause severe emotional injury, or that the CCSD's actions were so outrageous and intolerable as to offend generally accepted standards of morality and decency. *Craft v. Rice*, 671 S.W.2d 247, 249 (Ky. 1984). We also

agree with the trial court that Collins's claims for intentional infliction of emotional distress and negligent infliction of emotional distress are subsumed by his claims for emotional damages arising from the alleged defamation. *Rigazio v. Archdiocese of Louisville*, 853 S.W.2d 295, 299 (Ky. App. 1993). Therefore, the trial court properly granted summary judgment on these claims.

Accordingly, we affirm the summary judgment of the Carroll Circuit Court.

ALL CONCUR.

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