

NOTICE  
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2012 IL App (4th) 110494-U

Filed 3/8/12

NO. 4-11-0494

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of PETE LAMBIE, Deceased,	)	Appeal from
LAURIE EPKINS,	)	Circuit Court of
Petitioner-Appellant,	)	Woodford County
v.	)	No. 07L15
THE COUNTY OF WOODFORD, ILLINOIS, and	)	
JEANIE KRUMHOLTZ, in Her Capacity as Executor of	)	Honorable
the Estate of PETE LAMBIE,	)	Charles M. Feeney,
Respondents-Appellees.	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Justices Steigmann and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant county board member was acting within the scope of his official duties when he informed county employees and county officials that plaintiff supervisor of assessments was allegedly engaged in an extramarital affair, his conduct was protected from liability under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 through 9-107 (West 2006)).

¶ 2 Plaintiff, Laurie Epkins, Woodford County Supervisor of Assessments, appeals the trial court's dismissal of her complaint, in which she alleged defendants Pete Lambie, a Woodford County Board member, and Woodford County engaged in defamatory conduct and conduct resulting in the intentional infliction of emotional distress so as to damage her reputation. Upon defendants' motion to dismiss, the court found both defendants were immune from liability, as the conduct complained of occurred within the scope of official county business. We affirm.

¶ 3

## I. BACKGROUND

¶ 4 In September 2006, Duane A. Gray, the treasurer of Tazewell County, received a letter from an anonymous source (signed by "a friend of Tazewell") claiming he or she had "information that might be of interest." Apparently, on August 11, 2006, plaintiff's vehicle was parked at the home of Jim Unsicker, chairman of the Tazewell County Board, and remained there until "late the next morning." The letter also stated that plaintiff's vehicle had been seen "at or near" Unsicker's home "on several occasions during the last month or so," including other times when it had remained overnight. The reason this information was considered "of interest" was because plaintiff was a married woman and she had reported to her office that she was sick on August 11, 2006.

¶ 5 Gray forwarded this letter to defendant Lambie, a member of the Woodford County Board. When Lambie received it, he immediately took it to plaintiff's office and showed it to her staff and other county officials. He told these individuals that plaintiff was having an adulterous affair and that she was "shacking up with Unsicker." At a November 2006 Woodford County Board meeting, Lambie called plaintiff "a habitual liar." It is unclear whether the habitual-liar comment was related to the allegations of the extramarital affair.

¶ 6 In September 2007, plaintiff filed a verified complaint accusing Lambie of (1) making false statements about her knowing they were false or, (2) if he believed them to be true, lacking reasonable grounds for such a belief. Plaintiff claimed Lambie's statements brought her into public disgrace and scandal. She sought compensatory and punitive damages for defamation and intentional infliction of emotional distress. Plaintiff named as defendants Woodford County (County) and Lambie, individually and in his capacity as a Woodford County Board Member.

¶ 7 The County and Lambie, who were both represented by the same attorney, filed a combined answer and affirmative defenses. The affirmative defenses focused primarily on the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 through 9-107 (West 2006)).

¶ 8 Lambie died on July 1, 2010, and his estate was substituted as a party defendant. Thereafter, the trial court ruled that plaintiff's defamation claim against Lambie abated upon his death. In January 2011, defendants filed a combined motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)) and a motion for summary judgment. (Because neither party challenges the fact that defendants filed a motion to dismiss after they had filed their answer, we assume the trial court granted defendants leave to withdraw their answer in lieu of filing this motion.)

¶ 9 After considering the parties' arguments presented at the hearing on defendants' motions, in May 2011, the trial court entered a written order, finding the Tort Immunity Act guided its decision as follows: (1) because the defamation count against Lambie individually abated upon his death, the County could not be held liable either since, pursuant to section 2-109, an entity cannot be held liable for a cause of action for which the employee is not liable; (2) the County was immune from liability on the intentional-infliction-of-emotional-distress cause of action pursuant to section 2-107, as a governmental entity is not liable for an employee's alleged libelous or slanderous acts; (3) Lambie was not liable for providing allegedly false information while acting within the scope of his employment pursuant to section 2-210; and (4) plaintiff could not recover punitive damages from either Lambie or the County pursuant to section 2-102. The court granted defendants' motion to dismiss. This appeal followed.

¶ 10

## II. ANALYSIS

¶ 11 Plaintiff appeals the trial court's order dismissing her complaint, asserting that the Tort Immunity Act does not preclude liability. Because this appeal involves a dismissal under section 2-619 (*Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009)) and an issue of whether statutory immunities apply (*Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 267 (2003)), our review is *de novo*. In reviewing a court's section 2-619 dismissal, we will accept as true all well-pleaded factual allegations (*Morris v. Illinois Central R.R. Co.*, 382 Ill. App. 3d 884, 886 (2008)), and then determine whether, as a matter of law, plaintiff's cause of action is barred by an affirmative matter that avoids the legal effect of or defeats the claim (*Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003)). "Immunity under the [Tort Immunity] Act is an affirmative matter properly raised in a section 2-619(a)(9) motion to dismiss." *Van Meter*, 207 Ill. 2d at 367.

¶ 12 Plaintiff claims that the trial court erred in determining that the Tort Immunity Act protected Lambie and the County from liability. She claims that defendants are responsible for her damages because when Lambie engaged in the conduct described in the complaint, he (1) was not involved in the determination of policy or exercising his discretion in administering policy (section 2-201), or (2) was not acting within the scope of his employment (section 2-210). The trial court did not address the applicability of section 2-201 and therefore, we will not address that section either. Moreover, we find section 2-210 dispositive of the issues presented here.

¶ 13 There is no dispute that plaintiff's action for defamation against Lambie did not survive upon his death, whereas plaintiff's action for intentional infliction of emotional distress did survive. Section 27-6 of the Illinois Probate Act of 1975 specifically provides that actions for damages for personal injuries (except actions for defamation) survive upon the tortfeasor's death.

755 ILCS 5/27-6 (West 2006). Because Lambie, or his estate, cannot be held liable for defamation as provided by this statute, neither can the County. 745 ILCS 10/2-109 (West 2006) ("A local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable.") Therefore, based on these provisions, we hold the trial court did not err in dismissing plaintiff's cause of action for defamation (count I) against Lambie and the County.

¶ 14 In addressing the intentional-infliction-of-emotional-distress claim, we will determine whether Lambie's conduct fell under section 2-210 of the Tort Immunity Act so as to relieve him and/or the County from liability. By filing their motion to dismiss under section 2-619, defendants did not challenge the sufficiency of the allegations, *i.e.*, whether plaintiff sufficiently pled a cause of action for intentional infliction of emotional distress. Instead, they contend that, taking as true all well-pled allegations, the claim is barred by at least one section of the Tort Immunity Act. See *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 7.

¶ 15 Plaintiff's theory of the case, as alleged in her complaint, is that Lambie intentionally provided disparaging information about her to others, damaging her reputation. According to the allegations, Lambie engaged in such conduct "in his capacity as a Woodford County Board [m]ember." In determining that Lambie and/or the County are protected from liability under the Tort Immunity Act, the trial court applied section 2-210, which provides:

"A public employee acting in the scope of his employment is not liable for an injury caused by his negligent misrepresentation or the provision of information either orally, in writing, by computer or any other electronic transmission, or in a book or other form of library material." 745 ILCS 10/2-210 (West 2006).

Although this case does not necessarily involve an employer-employee relationship, the standard of whether Lambie was acting within the scope of his official duties is essentially the same standard as that applied when determining whether conduct occurred "within the scope of employment." See *Marco v. County of McHenry*, 218 Ill. App. 3d 503, 507 (1991).

¶ 16 Defendants argue that plaintiff admitted that Lambie was acting within the scope of his official duties when she stated in her verified petition that Lambie engaged in such conduct "in his capacity as a Woodford County Board [m]ember." Defendants contend this statement qualifies as a judicial admission. We disagree. It appears, when considered together with her argument on appeal, that plaintiff used the phrase "in his capacity" to assert that Lambie relied on his position as a board member to gain access to plaintiff's office, her employees, and other staff members. We do not believe that she intended to acquiesce that Lambie was acting within the scope of his official duties at the time he allegedly disparaged plaintiff, as she extensively argues to the contrary in her brief.

¶ 17 Our supreme court has applied the following guidelines in determining what constitutes acts performed within the context of employment:

" ' "(1) Conduct of a servant is within the scope of employment if, but only if:

- (a) it is of the kind he is employed to perform;
- (b) it occurs substantially within the authorized time and space limits;
- (c) it is actuated, at least in part, by a purpose to serve the master \*\*\*[.]

\*\*\*

(2) Conduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master." (Restatement (Second) of Agency § 228 (1958).)" *Bagent v. Blessing Care Corporation*, 224 Ill. 2d 154, 164 (2007) (quoting *Pyne v. Witmer*, 129 Ill. 2d 351, 360 (1989)).

"[I]f the employee's actions are different from the type of acts he is authorized to perform or were performed purely in his own interest, he has departed from the scope of employment." *Wright v. City of Danville*, 174 Ill. 2d 391, 405 (1996).

¶ 18 In applying these principles to the case at bar, it is clear that Lambie conducted himself for the purpose of furthering the County's interests, not his own. The County Board is the governing body of the County (see 55 ILCS 5/5-1004 (West 2006)) and, as the governing body, the Board must ensure that its officials and employees do not engage in wrongdoing, so as to protect the integrity of the County. The appointment of a supervisor of assessments in counties of less than 3,000,000 inhabitants and not having an elected board of supervisors, is made by the presiding officer of the county board, "with the advice and consent of the county board." 35 ILCS 200/3-5 (West 2006). The county board, by a vote of two-thirds of its members, has the power to dismiss the supervisor of assessments for "misfeasance, malfeasance[,] or nonfeasance in the performance of the duties of the office." 35 ILCS 200/3-10 (West 2006).

¶ 19 Given the authority of the County Board over plaintiff's position, it appears from the facts as alleged that it was in this vein that Lambie undertook a duty to investigate the allegations



complaint.

¶ 24      Affirmed.