2012 IL App (4th) 120253-U

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NO. 4-12-0253

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JOHN W. STRACK and JEANNE STRACK, Plaintiffs-Appellants, v. JAMES MORRIS and THE VILLAGE OF BEMENT, a Municipal Corporation, Defendants-Appellees.	))))))))	Appeal from Circuit Court of Piatt County No. 10L3 Honorable John P. Shonkwiler, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's grant of summary judgment in the defendants' favor, concluding that despite a police officer's decision to indirectly disseminate information to the public, which caused one of the plaintiffs to be viewed unfavorably, the defendants enjoyed immunity under the Local Governmental and Governmental Employees Tort Immunity Act.

¶ 2 In March 2010, plaintiffs, John W. Strack and Jeanne Strack, filed a multiple-count complaint against defendants, James Morris and the Village of Bement (hereinafter, the Village). The Stracks' suit alleged that Morris, a police officer for the Village, and the Village, as respondeat superior, engaged in the intentional infliction of emotional distress when Morris informed a local television station and newspaper agency about inappropriate-touching allegations that a parent of a minor made against John before Morris had investigated the claim. The Illinois Department of Children and Family Services (DCFS) later determined that the

allegation made by the minor as well as others were "unfounded."

¶ 3 In June 2011, Morris and the Village filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-1005 (West 2010)), claiming immunity under the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 to 10-101 (West 2010)). Following an April 2012 hearing, the trial court entered a written order, granting summary judgment in favor of Morris and the Village.

¶ 4 The Stracks appeal, arguing that the trial court erred by granting summary judgment in favor of Morris and the Village. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In February 2009, John coached the South Piatt softball team, which is comprised of female student players from both the Bement and Atwood-Hammond High School Districts. John's employment was supervised by Atwood-Hammond.

¶ 7 On March 11, 2009, Morris received a complaint from Gregory Sheumaker, the parent of K.S. (born February 10, 1992)—a South Piatt softball team member—who alleged that the previous afternoon, John "came up behind [K.S.] grabbed her by the buttocks with one hand, put his other arm around her, pulled her tight against the front of his body and held her against him while he asked her how her injured arm was feeling." Sheumaker did not witness the incident but stated that K.S. told him (1) John had not touched her in such a manner before that moment, (2) K.S. did not give John permission to touch her, (3) John's touching upset K.S., and (4) John had previously grabbed and hugged team members without their permission. Earlier that day, Sheumaker spoke with other parents who stated that the inappropriate touching had

"been going on for years." Sheumaker reported the incident to the Atwood-Hammond School District, but he stated that the administration did not believe K.S.'s accusations. Sheumaker gave Morris a list of other team members that he claimed John had touched inappropriately.

¶ 8 The following morning—after concluding that Sheumaker's report was "a legitimate complaint" based on his demeanor—Morris reported the incident to DCFS, a local television station, and a local newspaper reporter. That evening, the station televised the allegations Morris relayed and published the following report on its Internet Web site:

> "A high school coach is being investigated. He's accused of inappropriately touching students. Bement Police Office, James Morris, confirms the man coaches a girls team for Atwood-Hammond-Bement. The victims may have been athletes. Officers believe the abuse may have been ongoing for more than two years. No arrests have been made."

The same station also televised the story a few days later, which was reported in at least two other local newspapers.

¶ 9 Morris explained that he opted to inform the media instead of the respective school districts because (1) at that time, the Bement police department's relationship with the then-Bement School District Superintendent was "not smooth"; (2) John's wife, Jeanne, was the Bement School Board President; (3) as reported by Sheumaker, the Atwood-Hammond High School administration did not believe his allegations; and (4) he wanted to alert any potential victims who were hesitant to come forward that the police were investigating. Morris added that depending on the circumstances of the case, contacting the media is an option that had been

employed effectively in previous cases.

¶ 10 On March 13, 2009, two other softball team members provided Morris a written statement, each detailing that as early as June 2008, John made them feel uncomfortable when he repeatedly kissed them on their foreheads and hugged them tightly despite their telling him to stop. Both players stated that John's contact in this regard upset them. Two days later, K.S. provided Morris a written statement that stated, in part, the following:

> "On Tuesday, March 10th, toward the end of practice, Coach John Strack wrapped his arms around my waist and pulled me close to his body, holding me close for 5-10 seconds. This happened in the Bement gym. He asked me how was my arm and then asked me to pick up the bases. His hand was on the side of my hip (the side of my butt). It was very uncomfortable for me. I was in the middle of speaking to [a teammate] and as soon as he did that, I stopped talking. It was awkward and embarrassing. [My teammate] told me it was really bad and we needed to talk to [the school] principal *** about it."

¶ 11 Shortly thereafter, Morris transferred the case to DCFS because of its experience in handling such issues. After conducting a two-month investigation, DCFS reported that the allegations against John were "unfounded."

¶ 12 In March 2010, the Stracks filed a multiple-count complaint against Morris and the Village, claiming that Morris, in his capacity as a police officer for the Village, and the Village, as respondent superior, engaged in the intentional infliction of emotional distress when

Morris informed a local television station and newspaper agency about inappropriate-touching allegations that had been made against John before Morris had investigated the claim.

¶ 13 In June 2011, Morris and the Village filed a motion for summary judgment pursuant to section 2-1005 of the Civil Code, claiming immunity under various sections of the Tort Immunity Act. Following an April 2012 hearing, the trial court entered a written order, granting summary judgment in favor of Morris and the Village, finding that (1) sections 2-201 and 2-210 of the Tort Immunity Act barred the Stracks' claims against Morris and (2) sections 2-107 and 2-109 barred the Stracks' claims against the Village.

¶ 14 This appeal followed.

¶ 15 II. THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT

¶ 16 The Stracks argue that the trial court erred by granting summary judgment in favor of Morris and the Village. We disagree.

¶ 17 A. The Standard of Review

¶ 18 "Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *West Bend Mutual Insurance v. Norton*, 406 Ill. App. 3d 741, 744, 940 N.E.2d 1176, 1179 (2010). We review *de novo* a trial court's order granting summary judgment. *Id*.

¶ 19 B. The Trial Court's Grant of Summary Judgment in Morris' Favor

¶ 20 In this case, the trial court granted summary judgment in Morris' favor because it found, in part, that the Stracks' suit was barred under section 2-210 of the Tort Immunity Act,

which provides as follows:

> "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 2010).

¶ 21 The Stracks first contend that the trial court erred by granting summary judgment in Morris' favor because section 2-210 of the Tort Immunity Act "is not clear and unambiguous" in that it can be interpreted to either shield governmental actors from (1) "negligent misrepresentations as well as provisions of information regardless of mental state" or (2) "negligent misrepresentations and negligent provisions of information." Thus, the Stracks assert that given the ambiguity introduced by the modifier "negligent," section 2-210 must be construed against Morris. See *McElroy v. Forest Preserve District of Lake County*, 384 Ill. App. 3d 662, 666, 894 N.E.2d 170, 174 (2008) ("If a statute within the Tort Immunity Act contains an ambiguity, we will strictly construe the statute against the public entity because its immunities are in derogation of the common law"). In this regard, the Stracks posit that a genuine issue of material fact exists because the term "negligent" as used in section 2-210 must be construed to modify "provision of information," which would preclude immunity for the "intentional or reckless" provisions of information that the Stracks claim Morris provided to the media before he had investigated Sheumaker's allegation.

¶ 22 In support of their contention that the term "negligent" modifies the phrase "provision of information," the Stracks rely on the unreported federal case of *Drillis-Eizis v.*

Village of Orland Hills, No. 94-C-6212, 1995 WL 88800 (N.D. Ill. 1995). However, that case carries no precedential value (see *County of Du Page v. Lake Street Spa, Inc.*, 395 Ill. App. 3d 110, 122, 916 N.E.2d 1240, 1250 (2009) ("unreported federal court orders are not any kind of authority before Illinois courts")), and we do not find it persuasive (see *Tortoriello v. Gerald Nissan of North Aurora, Inc.*, 379 Ill. App. 3d 214, 224, 882 N.E.2d 157, 168 (2008) (quoting *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 355 Ill. App. 3d 352, 360, 823 N.E.2d 610, 617 (2005)) (" '[a]lthough this court is not bound to follow federal district court decisions [citation], such decisions can provide guidance and serve as persuasive authority' ")).

¶ 23 As the Stracks acknowledge in their brief to this court, in *Goldberg v. Brooks*, 409 Ill. App. 3d 106, 111-12, 948 N.E.2d 1108, 1114 (2011), the First District recently rejected the plaintiff's argument that the word negligent, as contained within section 2-210 of the Tort Immunity Act, modified both "misrepresentations" and "the provision of information." In so concluding, *Goldberg* provided the following rationale:

> "The word 'or' is disjunctive. [Citation.] Disjunctive connotes two different alternatives. [Citation.] Thus, '[a]s used in its ordinary sense, the word "or" marks an alternative indicating the various parts of the sentence which it connects are to be taken separately.' [Citation.] Moreover, we note that the phrase, 'or the provision of information either orally, in writing, in a book or other form of library material' was the result of an amendment to the original version of section 2-210 of the Tort Immunity Act (Pub. Act 84-1431 (eff. Nov. 25, 1986)), as was the language regarding

> computer and electronic transmissions (Pub. Act. 89-100 (eff. July 7, 1995)). Thus, grammar, the rules of statutory construction, and legislative history all point to the conclusion that the provision of information is a separate category from negligent misrepresentation, providing a broad protection to public employees acting within the scope of their employment." *Goldberg*, 409 Ill. App. 3d at 111, 948 N.E.2d at 1114.

Given our rejection of the federal foundation of the Stracks' claim and our approval of the First District's sound analysis in *Goldberg*, we reject the Stracks' contention that an ambiguity in section 2-210 of the Tort Immunity Act precluded the trial court's grant of summary judgment in Morris' favor.

¶ 24 In so concluding, we note that the Stracks also contend that the trial court's decision to grant summary judgment in Morris' favor "suggests an overly broad interpretation *** that creates absurd and manifestly unjust consequences." Despite their claim, we agree with the aforementioned quote from *Goldberg* that based on the plain language of section 2-210 of the Tort Immunity Act, the legislature sought to provide a public employee, who is acting within the scope of his employment, broad protections regarding the provision of information. We therefore decline the Stracks' implicit suggestion to judicially amend section 2-210 of the Tort Immunity Act and create an exception—where none currently exists—to the immunity afforded.

¶ 25 In this case, the parties do not dispute that Morris was acting within the scope of his employment. In his deposition, John instead contends that the suit he and Jeanne filed concerns the emotional distress they experienced as a direct result of Morris' decision to provide

the information at issue to the media prior to conducting an investigation. Specifically, John claims that Morris exercised poor judgment by intentionally providing Sheumaker's allegation to a television station and a newspaper agency, knowing that they would, in turn, transmit that information to the public. However, the clear, unambiguous language of section 2-210 of the Tort Immunity Act coupled with the facts of this case—even when viewed in the light most favorable to the Stracks—leads us to conclude that the trial court did not err by granting summary judgment in Morris' favor.

¶ 26 C. The Trial Court's Grant of Summary Judgment in the Village's Favor

¶ 27 Because we have concluded that Morris—who was employed by the Village—was immune under section 2-210 of the Tort Immunity Act, the Village, as respondent superior, is also immune pursuant to section 2-109 of the Tort Immunity Act, which states that "[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." 745 ILCS 10/2-109 (West 2010).

¶ 28 Accordingly, we conclude that the trial court did not err by granting summary judgment in favor of Morris and the Village.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the trial court's judgment.

¶ 31 Affirmed.