

SCANNED
FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WILLIAM DAVID HAUGHT II

2020 MAR 10 PM 12:55

Plaintiff,

CLERK
KANAWHA COUNTY CIRCUIT COURT

v.

Civil Action Number: 19-C-1154
Honorable Charles E. King

**DAVID FLETCHER, individually and
as mayor of the TOWN OF BELLE,
West Virginia and TOWN OF BELLE,
West Virginia, a municipal corporation.**

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

Pending before the Court is *Defendants Town of Belle and David Fletcher's Motion to Dismiss*. The Court has reviewed Defendants' motion and Plaintiff's response. The Court has also heard oral arguments from the Parties' respective counsel on February 5, 2020. After careful consideration of the Parties' briefs, oral arguments, and relevant West Virginia law, the Court hereby makes the following findings of facts and conclusions of law in **GRANTING** the Defendants' motion:

FINDINGS OF FACT

1. On or about May 21, 2019¹, the Plaintiff alleges that the Town of Belle held its regularly scheduled council meeting. The Plaintiff contends that, after the meeting, Mayor Fletcher asked council members and one other patrolman to stay and discuss a situation between Officer Haught and another citizen from Belle.

¹ Although not relevant to the specific issues at hand, the Defendants note that the council meeting referenced by Plaintiff actually took place on June 18, 2019.

2. The Plaintiff further contends that, at this post-council meeting, Mayor Fletcher stated that Officer Haught would not be getting a pay raise because he was having an extramarital affair with a female citizen of Belle while on duty as a policeman. Plaintiff filed suit for slander and defamation of character in addition to a violation of the policeman's bill of rights.

3. The Defendants filed a motion to dismiss and supporting memorandum of law in support thereof arguing that the Town of Belle is immune from liability for defamation because political subdivisions cannot be held liable for intentional torts under the West Virginia Governmental Tort Claim and Insurance Reform Act, W.Va. Code §29-12A-1 et. seq. Defendants further argued that, as a matter of law, Mayor Fletcher is entitled to qualified privilege as the mayor is privileged to discuss personnel matters involving a town employee with city council members.

4. With respect to Plaintiff's second cause of action, the Defendants argued that they did not violate the procedural due process provisions of W.Va. Code §8-14A-1 et. seq. because no "punitive action" was sought or taken against Officer Haught as that term is defined by the statute.

5. The parties do not dispute that Mayor Fletcher did have a discussion with members of city council following the conclusion of Town of Belle's public council meeting on June 18, 2019 as alleged. The Defendant explained that the husband of the woman with whom Officer Haught was allegedly engaged in a relationship and who lodged a complaint with the mayor was present at the public city council meeting which led Mayor Fletcher to explain his presence at the meeting to council members after the public meeting concluded. There is no allegation that any private citizens or non-employees of the Town of Belle were present for the aforementioned discussion that took place after the public meeting.

6. The parties further do not dispute that Mayor Fletcher did state during this post-council meeting that Officer Haught would not be receiving a pay raise.

CONCLUSIONS OF LAW

Plaintiff's Slander/Defamation of Character Claim (Count I)

1. Pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, if a Complaint pleads no set of facts entitling a Plaintiff to relief, then the Court must properly dismiss the action or claim for which no provable set of facts exists. *Owen v. Board of Education*, 441 S.E.2d 398 (W.Va. 1994); *Holbrook v. Holbrook*, 474 S.E.2d 900 (W.Va. 1996).

2. The instant motion raises immunity issues. Under W.Va. Code §29-12A-1 et. seq., the Governmental Tort Claims and Insurance Reform Act provides that political subdivisions are immune from certain claims unless the claim falls within a category for which the Act says that a political subdivision may be liable. The Act specifically provides that:

Except as provided in subsection (c) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function: Provided, that this article shall not restrict the availability of mandamus, injunction, prohibition, and other extraordinary remedies.

W.Va. Code §29-12A-4(b)(1). Subsection (c) further provides that:

(c) Subject to sections five [§29-12A-5] and six [§29-12A-6] of this article, a political subdivision is liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(2) Political subdivisions are liable for injury, death, or loss to persons or property caused by the *negligent* performance of acts by their employees while acting within the scope of employment.

W.Va. Code §29-12A-4(c)(2)(emphasis added).

3. The Court **FINDS** that Plaintiff's claim against the Town of Belle does not fall within any of the recognized categories of claims for which a political subdivision may be sued. Slander and defamation of character are intentional torts, but a political subdivision cannot be held liable for intentional torts. *Mallamo v. Town of Rivesville*, 197 W.Va. 616, 477 S.E.2d 525, 534 (1996). "Only claims of negligence specified in W.Va. Code, 29-12A-4(c) can survive immunity from liability under the general grant of immunity in W.Va. Code, 29-12A-4(b)(1)." *Zirkle v. Elkins Rd. Pub. Serv. Dist.*, 221 W.Va. 409, 414, 655 S.E.2d 155, 160 (2007).

4. The Court **FINDS** that, to the extent the Plaintiff has sued Mayor Fletcher in his official capacity, this is tantamount to a claim against the Town. *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 690 (1978).

5. For the reasons stated hereinabove, the Court **FINDS** that the Town of Belle and David Fletcher, in his official capacity, are entitled to statutory immunity with respect to Plaintiff's claim for slander and defamation of character (Count I). Thus, Count I is hereby **DISMISSED** pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure as to the Town of Belle and Mayor Fletcher in his official capacity.

6. Additionally, Plaintiff has sued Mayor Fletcher in his individual capacity for slander/defamation of character. Under West Virginia law,

The essential elements for a successful defamation action by a private individual are (1) defamatory statements; (2) a non-privileged communication to a third party; (3) falsity; (4) reference to the plaintiff; (5) at least negligence on the part of the publisher; and (6) resulting injury.

Syl. Pt. 1, *Crump v. Beckley Newspapers, Inc.*, 173 W.Va. 699, 320 S.E.2d 70 (1984). Because defamation only involves non-privileged communications, if an individual is privileged to discuss that matters at issue, then that individual cannot be liable for slander or defamation of character as a matter of law. Defendants contend that Mayor Fletcher is entitled to a qualified privilege due to

his position as the Mayor of the Town of Belle. The Plaintiff contends that whether Mayor Fletcher acted in good faith is a question of fact to be explored through discovery.

7. Under West Virginia law:

A qualified privilege exists when a person publishes a statement in good faith about a subject in which he has an interest or duty and limits the publication of the statement to those persons who have a legitimate interest in the subject matter. *Swearingen v. Parkersburg Sentinel Co.*, 125 W.Va. 731, 744, 26 S.E.2d 209, 215 (1943). *See also England v. Daily Gazette Co.*, 143 W.Va. 700, 104 S.E.2d 306 (1958).

Mauck v. City of Martinsburg, 167 W.Va. 332, 280 S.E.2d 216, 221 (1981).

8. The issue of whether or not a Defendant is entitled to qualified privilege is a question of law for the Court to decide. *Crump v. Beckley Newspapers, Inc.*, 173 W. Va. 699, 320 S.E.2d 70 (1984). The issue of whether or not a Defendant has abused his or her privilege is also a question of law for the Court to decide. *Id.*

9. Even viewing the allegations contained in the Complaint in a light most favorable to the Plaintiff, the Court **FINDS** that Mayor Fletcher had an interest, if not a duty, as the mayor to address a complaint from a citizen that a Town patrolman was having an inappropriate relationship with his wife while on duty. The Court **FINDS** that no defamation claim exists when a mayor discusses a citizen complaint involving personnel matters pertaining to a Town of Belle police officer with Town representatives as such matters fall within the mayor's qualified privilege as the highest ranking elected official of the Town.

10. The Plaintiff does not allege that Mayor Fletcher made the subject statement to any third-parties not associated with the Town of Belle. Rather, he only discussed this internal personnel matter with representatives of the Town of Belle outside the presence of private citizens following the public city council meeting. This undisputed fact indicates to the Court that Mayor Fletcher discussed this matter in good faith and without malice toward Officer Haught.

10. Accordingly, the Court **FINDS** that David Fletcher had a qualified privilege to discuss the matters alleged by Plaintiff with representatives of the Town of Belle, and thus, he may not be held personally liable for slander or defamation of character as a matter of law.

11. Accordingly, the Court hereby **FINDS** that the Plaintiff's slander/defamation of character claim (Count I) is hereby **DISMISSED** pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure as to David Fletcher in his personal capacity on the basis of qualified privilege.

Plaintiff's Violation of the Policeman's Bill of Rights Claim (Count II)

12. Plaintiff's second cause of action asserts a violation of the "policeman's bill of rights" as he contends that he did not receive notice of a hearing on the issue of the reasons behind the denial of a prospective pay raise pursuant to W.Va. Code §8-14A-1 et. seq.

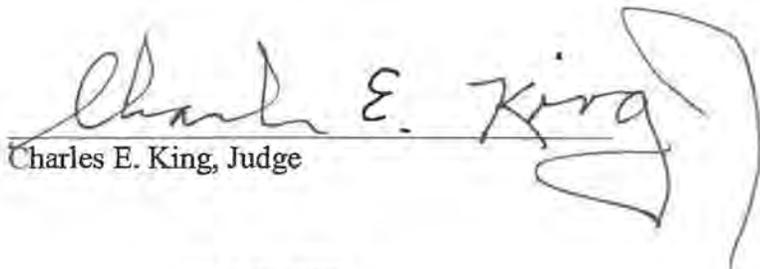
13. The Court **FINDS** that, pursuant to W.Va. Code §8-14A-1(7) a "punitive action" must be sought against a police officer in order to be entitled to notice and a hearing under the civil service statute.

14. The term "punitive action" is unambiguously defined in the statute to include "any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment." W.Va. Code §8-14A-1(7). The only "punitive action" that Plaintiff alleges to have suffered was that he failed to receive a prospective pay raise. He was not otherwise disciplined and received no reduction in his current salary based upon the matters at issue in the Complaint. The Court **FINDS** that the failure to receive a prospective pay raise does not meet the definition of "punitive action" as set forth in W.Va. Code §8-14A-1(7). Thus, the Plaintiff was not entitled to a notice or hearing under the civil service statute.

15. Accordingly, the Court hereby **FINDS** that Plaintiff was not entitled to the due process protections set forth in W.Va. Code §8-14A-1 et. seq., and thus, Count II is hereby dismissed for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

WHEREFORE, for these reasons set forth hereinabove, the Defendants' *Motion to Dismiss* is hereby **GRANTED** in its entirety as the Plaintiff has failed to plead a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. Accordingly, the Court hereby **ORDERS** that this case shall be **DISMISSED**, with prejudice, and removed from the Court's docket. The Plaintiff's objections and exceptions are raised and preserved.

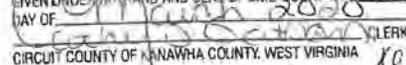
ENTERED this 10th day of March, 2020.


Charles E. King, Judge

Prepared by:



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STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 12
DAY OF March 2020.

CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA KG