

State of Minnesota

In Court of Appeals

No. A08-1580

Pigs R Us, LLC, a Minnesota
limited liability company,

Respondent,

vs.

Compton Township and
Compton Township Board

Appellant.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Respondent Pigs R Us, LLC. (“Pig R Us”) asserts that Appellant Compton Township and the Compton Township Board (collectively referred to herein as “Compton Township”), are not protected by statutory or official immunity and that it is entitled to damages for its mandamus action. Respondent asserts that it is entitled to damages because they brought this action as a mandamus action, not a tort action. However, Respondent makes no attempt to define the meaning of “tort” as its contemplated in the Tort Claims Act. Finally, Respondent argues that the mandamus statute is an “applicable statute” which does not provide immunity for municipalities.

Simply because Respondent brought a mandamus action does not mean that its cause of action is not a tort. In order to determine whether the claim in this action is a tort or not, one must examine the definition of a tort. When the definition of a tort is examined, it is clear that Respondent’s claims constitute a tort. Furthermore, the mandamus statute is not an “applicable statute” which precludes the applicability of immunity to a municipality.

ARGUMENT

I. RESPONDENT’S CLAIMS CONSTITUTE A TORT ACTION

A tort is defined as a “private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages.” Blacks Law Dictionary 1335 (7th Ed. 1979).

The Respondent asserts that since its action is a mandamus action, that this matter is not a tort action. It should be noted that Deon Roth, the owner of Pigs R Us, also

brought an individual action for damages as a result of denial of a building permit. Mr. Roth's claims were dismissed by the trial court. Rather than simply stating that since Respondent brought a mandamus action this matter is not a tort action, one should examine the nature of the claim to determine whether it is or is not a tort action. In this case, the Respondent is claiming damages as the result of a denial of a building permit in the amount of \$1,735,026.95. (A-221). Respondent is seeking these damages for financing costs, increased construction costs, general contractor fees, loss of production, and statutory costs. Id. Respondent claims that these damages were suffered as a result of a nine-month delay in constructing a hog facility. It is clear that this matter is not a contractual dispute. Neither party has alleged that a contract exists between Appellant and Respondent. Respondent alleges that Appellant's alleged wrongful denial of a building permit caused them to suffer injuries. Such a claim falls within the broad definition of a tort claim. Simply because Respondent fashioned the claim as a mandamus action does not mean that the claim itself is not a tort claim. A review of the types of damages sought by Respondent, it is clear that Respondent's claim can be considered a tort.

Additionally, a review of the Tort Claims Act indicates that it was not intended to solely apply to just torts. First, there is no definition of the term tort in the Tort Claims Act, even though the term is used throughout the Act. Also, Tort Claims Act contains numerous exceptions to the provision that states a municipality is generally liable for its torts that would not be necessary if the Tort Claims Act only applied to torts. For example, a municipality is immune from any "claim in connection with the assessment

and collection of taxes.” Minn. Stat. § 466.03, subd. 3. A municipality is also immune from any claim for loss of public assistance or welfare benefits. Minn. Stat. § 466.03, subd. 9. A claim based on the collection of taxes or loss of welfare benefits is not your typical tort claim. Clearly, there would be no personal injury or property loss. Such a claim would have to be based on assessment of an improper amount of taxes and an improper denial of benefits. These types of actions are not unlike Respondent’s claim of an improper denial of a building permit rather than a tort action. Since it appears that a tax claim and a claim for loss of public assistance or welfare benefits is not a tort action, it would not be necessary to include these as an exception if the Tort Claims Act was only supposed to apply to torts. If the Tort Claims Act was limited to solely torts, an exception for a non-tort would not be necessary. Since non-torts are included as an exception from the Tort Claims Act, it is clear that it was intended to apply to more than just torts.

II. THE PHRASE “APPLICABLE STATUTE” ONLY APPLIES TO THOSE CLAIM ENUMERATED IN MINN. STAT. § 466.03.

“[E]very municipality is subject to liability for its torts and those of its officers, employees and agents acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.” Minn. Stat. § 466.02. This provision is subject to exceptions. Minn. Stat. § 466.03 subd. 1. provides:

Section 466.02 does not apply to any claim enumerated in this section. As to any such claim every municipality shall be liable only in accordance with the applicable statute and where there is no such statute, every municipality shall be immune from liability.

Minn. Stat. § 466.03 subd. 1.

Respondent argues that since the mandamus statute provides for damages that the Tort Claims Act exceptions to a Township's liability are inapplicable. However, Respondent's interpretation of Minn. Stat. §466.03, subd. 1 is incorrect. Respondent claims that if there is an "applicable statute", that the exceptions to liability pursuant to Minn. Stat. § 466.03, do not apply. Respondent asserts that the mandamus statute is an "applicable statute" that precludes immunity. However, when both sentences contained in Minn. Stat. § 466.03, subd. 1, are read together, it is clear that the "applicable statute" referred to is any statute that may apply specifically to the enumerated exceptions in Minn. Stat. § 466.03. The first sentence of this section states that § 466.02 does not apply to any claim enumerated in Minn. Stat. § 466.03, subd. 1. The following sentence refers to the first sentence by stating that "[a]s to any such claim, every municipality shall be liable only in accordance with the applicable statute and where there is no such statute, every municipality shall be immune from liability." When these two sentences are read together, it is clear that the terms "claim" and "applicable statute" concern only those claims enumerated in Minn. Stat. § 466.03 and any applicable statute that may address the claim enumerated in Minn. Stat. § 466.03. The term "claim" used in the second sentence refers to the enumerated claims mentioned in the first sentence. Since mandamus is not enumerated as an exception in Minn. Stat. § 466.03, a municipality or Township remains statutorily immune from liability pursuant to the exceptions enumerated in Minn. Stat. § 466.03.

III. CASE LAW CITED BY RESPONDENT IS NOT CONVINCING

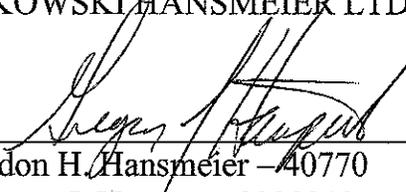
Respondent cites Hoben v. City of Minneapolis, 324 N.W.2d 161 (Minn. 1982) for the proposition that an “applicable statute” does not have to be enumerated in Minn. Stat. §466.03. However, Hoben is distinguishable from the instant case. Hoben dealt with payment of workers’ compensation and no-fault benefits after a municipal employee was injured in an automobile accident. The municipality sought immunity for its employee’s claims. Ultimately, the Supreme Court of Minnesota ruled that the municipality was not immune from its employee’s claims. Respondent argues that since there is no exception for no-fault benefits in Minn. Stat. § 466.03, that an “applicable statute” can be any other statute, not just those enumerated in Minn. Stat. § 466.03. However, when Hoben is reviewed more closely, it is clear it does not stand for Respondent’s proposition. The court in Hoben relied upon a provision of the Minnesota No-Fault Automobile Insurance Act which provided: “The State of Minnesota or any agency thereof and any political subdivision of the State or agency thereof shall provide security by lawfully obligating itself to pay benefits in accordance with Section 65B.41 to 65B.71, either as a self-insurer pursuant to Subd. 3, or through purchase of a plan of reparation security.” Minn. Stat. § 65B.48, subd. 4, (1980) While Minn. Stat. § 466.03 does not contain a specific exception for no-fault benefits, the Minnesota No-Fault Automobile Insurance Act itself indicates that a municipality is not immune from a claim for such benefits. The mandamus statute has no such provision stating that a municipality is not immune from a damages claim related to a mandamus action. Therefore, Hoben is not applicable to the instance case.

CONCLUSION

For these reasons, Appellant Compton Township and the Compton Township Board are immune from Respondent's damages claim. The Trial Court's ruling should be reversed and Respondent's claim for damages should be dismissed.

Dated this 9th day of December, 2008.

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