UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2015

September Term, 2015

BRITTANY C. DAWSON, *ET AL.*

v.

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS, *ET AL.*

Eyler, Deborah S.,
Arthur,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 10, 2016

Maria Alejandri, a teacher at Leith Walk Elementary School in Baltimore City, made a report of suspected abuse involving one of her students, K.P., age 6, to the school principal, Edna Green, and Baltimore City police. After the reporting protocol was followed, which included interviews by a police officer and a social worker, and a physical examination at Johns Hopkins Hospital, it was determined that the report was unsubstantiated.

Appellant, Brittany Dawson, K.P.'s mother, filed suit in the Circuit Court for Baltimore City against Alejandri, Green, and the Baltimore City Board of School Commissioners, appellees. Below, appellees, collectively, moved to dismiss the complaint for failure to state a claim, which the circuit court granted.

In her appeal, Dawson asserts that the circuit erred in dismissing the complaint. For the reasons discussed below, we shall affirm the judgment of the circuit court.

BACKGROUND

Dawson's complaint asserted the following:

In January 2014, Dawson's daughter was six years old and a student at Leith Walk Elementary School in Baltimore City. On January 16, 2014, Alejandri, her daughter's teacher, "misidentified [K.P.] as having been abused by family members, and reported such alleged activity to the Baltimore City Police Department." A male police officer interviewed K.P. "in a closed room, without anyone else permitted to be present." The police officer transported K.P. to Johns Hopkins Hospital, where she "was detained for several hours," undergoing a physical examination and an interview with a social worker. Meanwhile, the police officer informed Dawson that she was not allowed to leave her

home, and caused a social worker to inspect the home and interview Dawson. The officer did not permit Dawson to see her daughter during the time she was at the hospital.

On these facts, Dawson's complaint alleged two counts of negligence and one count of false imprisonment against appellees:

> That the Defendants were negligent, reckless and car[e]less in erroneously identifying the minor plaintiff as having been the victim of abuse by her family and in reporting such alleged abuse to the Baltimore City Police Department and the Child Protective Services.
>
> Among the acts of negligence there and then committed by Defendants they failed to properly identify the child allegedly having been abused; failed to exercise due care to examine the minor plaintiff for signs of abuse; failed to maintain proper and adequate records sufficient to correctly identify students at the school; failed to conform to established rules, regulations and protocols for the protection of students and their parents, including the plaintiff herein, from unwarranted charges of abusive and criminal behavior; failure to possess adequate knowledge concerning the students in their care; improperly reporting an act or acts of child abuse without sufficient or reasonable basis for doing so; failed to supervise those employees at the school who were responsible for or participated in the actions described herein; failed to notify Plaintiff, Brittany C. Dawson, of the events concerning her daughter, the minor plaintiff, as described herein; and failed to take the proper precautions to ensure the safety and well being of the minor plaintiff. [*sic*]

Appellees moved to dismiss the complaint on the grounds that it failed to state a claim on which relief could be granted. Specifically, they argued that the individuals named in the complaint, Alejandri and Green, were immune from civil liability for making the report under Maryland Code, Family Law (FL) § 5-708 and Courts and Judicial Proceedings (CJP) § 5-620 because Dawson had not alleged that the report was made in

bad faith. Appellees further argued that the complaint against the Board should be dismissed because, on the facts alleged, it could be liable only for tort judgments against its employees, and the employees were immune from liability. The circuit court agreed with the appellees, and dismissed the complaint.

DISCUSSION

We review the grant of a motion to dismiss for failure to state a claim for legal correctness. *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71 (1998). We will assume the truth of all well-pleaded facts and allegations in the complaint, as well as reasonable inferences that may be drawn therefrom. *Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 350 (2012). We do not, however, consider "merely conclusory charges." *Valentine v. On Target, Inc.*, 353 Md. 544, 548 (1999) (quoting *Faya v. Almaraz*, 329 Md. 435, 443-44 (1993)). "Upon appellate review, the grant of a motion to dismiss for failure to state a claim upon which relief may be granted is affirmed only if the allegations and inferences would not provide relief to the plaintiff." *Polek*, 424 Md. at 350.

Complaints must "contain a clear statement of the facts necessary to constitute a cause of action." Md. Rule 2-305. "[T]he subject matter of a claim must be stated with such reasonable accuracy as will show what is at issue between the parties, so that, among other things, the defendant may be apprised of the nature of the complaint he is required to answer and defend." *Pepper v. Johns Hopkins Hosp.*, 111 Md. App. 49, 69 (1996) (quoting *Fischer v. Longest*, 99 Md. App. 368, 380 (1994)) (internal quotations removed). "Facts must be pleaded with some specificity to demonstrate that the elements which are required to sustain the cause of action exist." *Valentine*, 353 Md. at 549. "Bald assertions and

conclusory statements by the pleader will not suffice." *Bobo v. State*, 346 Md. 706, 708-09 (1997).

Dawson asserted, *inter alia*, in counts I and III of her complaint that appellees negligently "failed to properly identify the child allegedly having been abused;" "fail[ed] to possess adequate knowledge concerning the students in their care;" and "improperly report[ed] an act or acts of child abuse without sufficient or reasonable basis for doing so."

Dawson argues on appeal that, although FL § 5-708 and CJP § 5-620 provide immunity from civil liability for reporters of suspected child abuse, those sections must be read in conjunction with CJP § 5-518, which provides that the Board will indemnify any judgments against employees resulting from a tortious act. She posits that immunity from liability is not immunity from suit and that, although the individuals are immune from civil liability, the Board would be liable for resulting judgments, and not the individuals. She also asserts that the proper analysis includes fact finding as to both a lack of good faith, as required in the reporting statutes, and negligence.

Appellees respond that Dawson failed to plead any facts in her complaint relating to any actions taken by them, particularly Green and the Board. They further argue that the complaint does not allege that Alejandri's report was not made in good faith, and that, absent bad faith or malice – and nothing less – reporters are immune from liability under FL § 5-708 and CJP § 5-620. Finally, appellees assert that, since the individuals are immune from civil liability, there is nothing for the Board to indemnify.

Two statutes govern immunity for reporters:

> Any person who makes or participates in making a report of abuse or neglect under § 5-704 [reports by health practitioners, police officers, educators, and human service workers], § 5-705 [reports by other persons] or § 5-705.1 [reporting suspected abuse or neglect occurring outside the State] of this subtitle ... or participates in an investigation or a resulting judicial proceeding shall have the immunity described under § 5-620 of the Courts and Judicial Proceedings Article from civil liability or criminal penalty.

Md. Code Ann., Fam. Law § 5-708. And:

> Any person who in good faith makes or participates in making a report of abuse or neglect under § 5-704, § 5-705 or § 5-705.1 of the Family Law Article or participates in an investigation or a resulting judicial proceeding is immune from any civil liability or criminal penalty that would otherwise result from making or participating in a report of abuse or neglect or participating in an investigation or a resulting judicial proceeding.

Md. Code Ann., Cts. & Jud. Proc. § 5-620.

The grant of immunity protects those who report suspected abuse or neglect from civil liability in order to discourage reporters from choosing to stay silent for fear of legal repercussions of their report. Immunity, therefore, helps to protect children in a forward-looking, institutional manner.

The immunity granted by CJP § 5-620 is predicated on the good faith of the person making the report. "The Legislature understood that the purpose of mandating reporting of child abuse and neglect would be undermined if a person making a good faith report pursuant to FL § 5-704 or § 5-705, that later proved to be false, were to be subjected to civil liability." *Rite Aid Corp. v. Hagley*, 374 Md. 665, 678 (2003). Good faith, given its plain and ordinary meaning, is "an honest belief, the absence of malice and the absence of

design to defraud or to seek an unconscionable advantage" and its definition "under [FL] § 5-708 means with an honest intention." *Id.* at 680-81 (quoting *Catterton v. Coale*, 84 Md. App. 337, 342 (1990)).

That is, "to be entitled to the statutory immunity, a person must act with an honest intention (i.e. in good faith), *not simply negligently*, in making or participating in the making of a report of abuse or neglect" under FL § 5-704. *Id.* at 681 (emphasis added). "The standard for determining good faith is a defendant's honest belief in the suitability of the actions taken. Thus it is immaterial whether a person is negligent in arriving at a certain belief or in taking a particular action." *Id.* at 682 (quoting *B.W. v. Meade Cnty.*, 534 N.W.2d 595, 598 (S.D. 1995)).

In *Rite Aid*, store manager Robert Rosiak refused to return photographs of Dexter Hagley and his eight-year-old son in a bathtub, developed using the Rite Aid store's one-hour photo service, instead reporting them to the police as suspected sexual abuse of the child. *Id.* at 671-73. Hagley alleged that the report was made in bad faith because of the inefficient way in which it was conducted by Rosiak. The Court of Appeals disagreed, quoting from our unreported opinion:

> We, however, are at a loss to discern how any of these facts, whether considered singly or collectively, could lead to an inference that Mr. Rosiak lacked good faith in reporting suspected child abuse. As the Court of Special Appeals pointed out:
>
> "Those assertions do not ... give rise to any reasonable inference that Rosiak did not honestly believe that the photographs were suggestive of child pornography or child abuse. He did not know Hagley; there was no suggestion of any fact that might even suggest a motive, other than a belief

> that the photographs depicted a form of child abuse, for Rosiak to call the police."

Id. at 686-87. Rather, the Court concluded that Hagley's allegation that there were alternatives available for handling the situation more effectively and sensitively, "while perhaps suggesting negligence, does not equate to bad faith or a lack of good faith. And, as we have seen, negligence is not sufficient to negate good faith." *Id.* at 687.

To maintain an action in negligence, a plaintiff must assert in the complaint that (1) the defendant had a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the plaintiff suffered actual injury or loss; and (4) the injury or loss proximately resulted from the defendant's breach of the duty. *Valentine*, 353 Md. at 549 (citing *BG & E v. Lane*, 338 Md. 34, 43 (1995); *Rosenblatt v. Exxon*, 335 Md. 58, 76 (1994); and *Lamb v. Hopkins*, 303 Md. 236, 241 (1985)).

Here, Dawson argues that the proper analysis is to look at *both* good faith and negligence, not good faith only.[1] This suggested approach is contrary to Maryland case law, and reads an added standard into the statute. CJP § 5-620 explicitly provides that "[a]ny person who in good faith makes ... a report of abuse or neglect under § 5-704 ... is immune from *any* civil liability" arising from the making of that report. Md. Code Ann., Cts. & Jud. Proc. § 5-620 (emphasis added). There is nothing in the language of the statute

[1] Dawson argues for the first time on appeal that the appellants engaged in gross negligence, which would remove the individuals from the scope of the indemnification statute. Our discussion, *infra*, on Dawson's indemnification argument renders moot the issue of whether the negligence was of a heightened degree. Moreover, we decline to consider questions not pleaded or raised and decided below. *See Richardson v. Boozer*, 209 Md. App. 1, 22 (2014).

to suggest that, even if a report were made in good faith, the reporter could then be held to have been negligent.

The holding in *Rite Aid*, where the handling of the report could "suggest negligence," but immunity was granted to the reporter, demonstrates that immunity from "any civil liability" arising from the act of the report includes civil liability for negligence. The Court described negligence in arriving at the decision to report as "immaterial," because prosecuting such negligence would discourage reports of suspected abuse, except in the most certain of circumstances. Despite Dawson's insistence to the contrary, allowing a suit for negligence against a reporter acting in good faith would clearly undermine the purpose of the immunity statute.

Regardless, despite her argument that the court should analyze both negligence and good faith, Dawson does not allege in her complaint that Alejandri acted either in bad faith or without good faith. Dawson alleged that Alejandri "misidentified" her daughter as having been abused and "failed to exercise due care to examine the minor plaintiff for signs of abuse." She did not include in her complaint any elaboration of facts regarding the basis of the report, such as whether K.P. said something to Alejandri, or whether Alejandri asked K.P. questions about her family. She does not allege a "design to defraud" on Alejandri's part, nor did she allege any facts that could be inferred to demonstrate a dishonest intention.

Further, the argument Dawson makes that immunity from liability differs from immunity from suit is misplaced. Application of the indemnification statute[2] first requires the finding of liability on the part of an employee of the Board. *Bd. of Educ. of Prince George's Cnty. v. Marks-Sloan*, 428 Md. 1, 27-28 (2012). Only then would the Board be responsible for the resulting judgment. It is not, as Dawson asserts, a mechanism by which to hold the Board responsible for the liability from which another defendant is protected by the immunity statutes. *See id.*

Finally, in light of our standard of review, Dawson's argument fails to address how her complaint alleged any facts that would amount to negligence, regardless of the relationship of that negligence to the good faith of the reporters. The only fact alleged as to the two counts of negligence was that Alejandri "misidentified" or "erroneously identif[ied]" K.P. as having been the victim of abuse. The remainder of the allegations in her complaint are merely conclusory statements with no accompanying facts to illustrate just how appellees, as she asserts, "failed to conform to established rules, regulations and protocols for the protection of students and their parents ... from unwarranted charges of

[2] The relevant subsection reads as follows:

> *Employees* — A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board under subsection (b) of this section, including damages that exceed the limitation on the county board's liability.

Md. Code Ann., Cts. & Jud. Proc. § 5-518(e).

abusive and criminal behavior" or what actions they undertook to cause Dawson to be "improperly subject to a criminal investigation."

In our review of the complaint, we find no clear statement of the facts; indeed, it is difficult to determine from the complaint just what occurred to give rise to the suggestion of alleged abuse, reporting it to the police, and investigating the report. For instance, alleging that the principal of the school "failed to maintain proper and adequate records sufficient to correctly identify students at the school" could give rise to myriad conclusions, related or unrelated to alleged abuse of a student. It is likewise unclear from the complaint whether K.P. was identified as possibly the victim of abuse, or whether the report related to another student and Alejandri mistakenly referred to K.P.

It is not certain how either of these scenarios could be related to a bad faith report of suspected abuse, as Dawson failed to plead the allegation with specificity in her complaint. Dawson also failed to assert facts regarding the duty of care Green owed Dawson, or how the duty was breached. The allegations in the complaint, and the inferences therefrom, provide no relief to Dawson, because it is impossible to discern, without inventing an entirely speculative narrative, the events of the day in question and what each appellant did or failed to do. Finally, we reiterate that Dawson's complaint contained no allegations of gross negligence.

Turning to Count II, the false imprisonment claim, we again conclude that the complaint failed to allege facts sufficient to state a claim on which relief could be granted. To maintain an action in tort for false imprisonment, a plaintiff must allege: (1) a deprivation of liberty; (2) without consent; and (3) without legal justification. *Dett v. State*,

161 Md. App. 429, 441 (2005). A plaintiff may pursue such an action against a defendant who causes the deprivation of liberty by another, such as a store who makes a report of shoplifting to police. "A private person does not become liable for false arrest, however, when he provides information, even mistaken information, to lawful authorities, even though that information is the principal cause of another's imprisonment." *Fletcher v. High's Dairy Prods. Div. of Capital Milk Producers Coop.*, 22 Md. App. 71, 75 (1974); *but cf. Montgomery Ward v. Wilson*, 339 Md. 701, 722 (1995) (individual *intentionally* providing false information that leads to arrest may be liable).[3]

Nothing alleged in Dawson's complaint involves deprivation of K.P.'s liberty by any of the appellees. The complaint describes the police officer's interview of K.P. in a closed room, and subsequent transport of her to the hospital for physical examination and an interview with a social worker. The police officer was not named as a defendant, and the complaint suggests no agency relationship between the officer and appellees. As such, it appears that Dawson rests her claim for false imprisonment on Alejandri having provided mistaken information to the police. But, Dawson did not assert any facts in her complaint

[3] False arrest and false imprisonment, both intentional torts under Maryland law, are "separate causes of action that share the same elements." *Dett*, 161 Md. App. at 441 (citing *Okwa v. Harper*, 360 Md. 161, 189-90 (2000)). "The interrelationship between false arrest and false imprisonment is such that the 'legal justification' to detain element is the 'equivalent to legal authority' under the law of arrest." *Id.* (quoting *Ashton v. Brown*, 339 Md. 70, 120 (1995)).

regarding whether Alejandri intentionally lied in her report to the police, nor did she allege any facts demonstrating that Alejandri was without legal justification in making the report.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED;
COSTS ASSESSED TO APPELLANTS.