

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

DARREL HARVEY,

Plaintiff,

v.

Case No.: 2022-CA-403

**WALTER McNEIL, in his Official Capacity
as Sheriff of Leon County, Florida,**

Defendant.

_____ /

DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

Defendant, WALTER McNEIL, in his official capacity as Sheriff of Leon County, Florida ("Sheriff McNeil"), by and through undersigned counsel, pursuant to Florida Rule of Civil Procedure 1.140(c), moves this Honorable Court for a judgment on the pleadings in his favor, on the following grounds:

1. Darrel Harvey ("Plaintiff") filed his Complaint, along with attached Exhibit A, on March 18, 2022. Sheriff McNeill filed his Answer and Affirmative Defenses on April 18, 2022. The Pleadings are now closed.

2. Pursuant to Florida Rule of Civil Procedure 1.140(c), after the pleadings are closed any party may move for judgment on the pleadings.

3. A motion for judgment on the pleadings raises questions of law from the pleadings only. *Taylor v. Hanlex Development, LLC*, 274 So. 3d 512, 512 (Fla. 5th DCA 2019) (citing *Whitaker v. Powers*, 424 So. 2d 154, 155 (Fla. 5th DCA 1982)). When there is no dispute to the facts, a motion for judgment on the pleadings will test the legal sufficiency of the cause of action. *Hilbrands v. Hilbrands*, 320 So. 3d 938, 939-940 (Fla.

Dist. Ct. App. 2021) (citing *U.S. Fire Ins. Co. v. ADT Sec. Servs., Inc.*, 134 So. 3d 477, 479 (Fla. 2d DCA 2013)). A motion for judgment on the pleadings is properly granted when the movant shows he is entitled to judgment as a matter of law based solely on the pleadings and attachments to the pleadings. *Id.* at 940. The trial court cannot consider matters outside of the pleadings when considering a motion for judgment on the pleadings. *Urribari v. 52 SW 5th CT WHSE, LLC*, 266 So. 3d 1257, 1262 (Fla. 4th DCA 2019).

Undisputed Pleading Facts

4. In this case, Plaintiff's Complaint alleges in pertinent part that:

5. On or about August 24, 2021, Defendant WALTER MCNEIL, In His Official Capacity As The Sheriff Of Leon County, transported inmate(s) via a prisoner transport van.

7. Prior to leaving the jail, an employee of the Defendant placed Plaintiff, DARREL HARVEY, shackled and handcuffed, in the back of the prisoner transport van, without ensuring he was properly strapped into his seat.

8. Defendant's employee driver negligently operated and/or maintained the prisoner transport van so that Plaintiff, DARREL HARVEY, was thrown from the back of the van and suffered bodily injury.

Complaint, ¶¶ 5 and 7-8.

The essence of Plaintiff's claim is that while an inmate at the Leon County Jail, he was shackled and handcuffed and then placed in the back of a prisoner transport van, without being strapped into his seat.

Legal Analysis

5. Under Florida law, “sovereign immunity is both an immunity from liability and an immunity from suit.” *Florida Highway Patrol v. Jackson*, 288 So. 3d 1179, 1185 (Fla. 2020); *McGhee v. Volusia County*, 679 So.2d 729, 733 (Fla. 1996); *Willingham v. City of Orlando*, 929 So.2d 43, 48 (Fla. 5th DCA 2006) (section 768.28(9)(a) states sovereign immunity is both an immunity from liability and an immunity from suit; thus, the trial judge should terminate civil proceedings when the immunity applies). To determine whether an action is barred by sovereign immunity, it is necessary to establish the character of the allegedly negligent governmental act or omission. *Pollock v. Florida Department of Highway Patrol*, 882 So. 2d 928, 933 (Fla. 2004). “[B]asic judgmental or discretionary governmental functions are immune from legal action, whereas operational acts are not protected by sovereign immunity.” *Id.* (citing *Henderson v. Bowden*, 737 So. 2d 532, 537-538 (Fla. 1999)).

6. An operational function is a function that is “not necessary to or inherent in policy or planning” and “merely reflect a secondary decision as to how those policies or plans will be implemented.” *City of Freeport v. Beach Community Bank*, 108 So. 3d 684, 690 (Fla. 1st DCA 2013) (quoting *Department of Health & Rehab. Servs. v. B.J.M.*, 656 So. 2d 906, 911 n. 4 (Fla. 1995)).

7. However, discretionary functions involve “an exercise of executive or legislative power such that a court’s intervention by way of tort law would inappropriately entangle the court in fundamental questions of policy and planning.” *City of Freeport*, 108 So. 3d at 690 (quoting *Mosby v. Harrell*, 909 So. 2d 323, 328 (Fla. 1st DCA 2005)); see also *Commercial Carrier Corp. v. Indian River County*, 371 So. 2d 1010, 1020 (Fla. 1979)

(acknowledging that an exception to waiver of sovereign immunity exists for “certain policymaking, planning or judgmental governmental functions [which] cannot be the subject of traditional tort liability”).

8. The decision by a sheriff to provide or remove seatbelts or to secure prisoners with seatbelts in the transport vehicle is a discretionary function. *Gualtieri v. Ronald J. Pownall and G4S Secure Solutions, Inc.*, -- So. 3d --; 2022 WL 944318 at *3 (Fla. 2d DCA 2022). The Second DCA acknowledge that there was a lack of decisions from the Florida courts on this specific issue but evaluated and considered numerous decisions from courts in other jurisdictions. *Id.*

9. The Second DCA considered the case of *Vinzant v. United States*, 458 F. App'x 329, 333 (5th Cir. 2012). *Id.* The Fifth Circuit held ***that the failure to secure prisoners seated in the rear of a vehicle with seatbelts is a discretionary act, and therefore not a decision for which the United States has waived sovereign immunity. The Marshals' decision was “based on a policy choice—striking a balance between the safety of the prisoners during transport and the safety of Marshals, which might be imperiled if the Marshals had to get close enough to the prisoners to buckle and unbuckle their seatbelts.”***¹ *Id.* The case of *MacCaffray v. United States*, No. 2:97-CV-403, 1998 WL 560047, at *3 (D. Vt. Aug. 27, 1998) was also considered by the Second DCA, and it was determined the *MacCaffray* case echoed the same concerns:

¹ Because Florida's sovereign immunity provision is modeled after the Federal Tort Claims Act (FTCA), Florida courts have routinely looked the FTCA and cases interpreting it for guidance in resolving questions pertaining to the scope of immunity under state law. See *Rabideau v. State*, 409 So. 2d 1045, 1046 (Fla. 1982); *Commercial Carrier*, 371 So. 2d at 1017-20; *Hollis v. School Board of Leon County*, 384 So. 2d 661, 663 (Fla. 1st DCA 1980).

The decision by the U.S. Marshals Service for the District of Vermont not to install seat belts for prisoners in its transport vehicles was made in the clear exercise of its judgment [, and] was based upon sound safety concerns involving the use by prisoners of the safety belts to break handcuffs and escape, or **any attempts to injure deputies who were fastening and releasing their seat belts**. The discretionary function exception is intended to cover exactly these sorts of public policy-driven considerations. (Emphasis added).

Gualtieri, 2022 WL 944318, at *4.

10. The Second DCA found that other courts have similarly determined that the use of seatbelts in transporting prisoners is a discretionary, policy-driven decision which is not subject to waiver of sovereign immunity. See, e.g., *Reynolds v. United States*, No. 4:04CV95/RV/EMT, 2006 WL 5400338, at *5 (N.D. Fla. Jan. 30, 2006) (explaining that “the decision of . . . whether to use safety belts is inherently grounded in social policy considerations of providing security to the public and employees of the [U.S. Marshals Service] and protecting the safety of prisoners” and thus “the failure to provide safety belts was based upon the exercise of a discretionary function”); *Maryea v. Velardi*, 135 A.3d 121, 126 (N.H. 2016) (holding that lack of seatbelts in inmate transport van “was a discretionary, rather than a ministerial, function for which the County was entitled to immunity”). *Gualtieri*, 2022 WL 944318, at *4.

11. Ultimately, the Second DCA found the reasoning in these cases persuasive and determined that “the decision of a law enforcement agency to provide seatbelts in vehicles used to transport prisoners or detainees clearly involves important policy considerations regarding the safety of prisoners and detainees, law enforcement, corrections staff, and the public.” *Id.* The Second DCA court went on to hold that the

decision to remove seatbelts from the vehicle in the *Gualtieri* case was a discretionary function for which the Sheriff is protected by sovereign immunity. *Id.*

12. In this case, Plaintiff complained about the Leon County Jail employee not securing his seat belt before being transported. Like, the Second DCA in the *Gualtieri* case, and the other cases cited therein, this Court should find that Plaintiff's claim raised in his Complaint regarding the Leon County Jail employee not securing his seat belt before being transported involved a discretionary function for which Sheriff McNeil is protected by sovereign immunity. Florida law provides that sovereign immunity includes immunity from liability and immunity from suit. Sheriff McNeil is entitled to a judgment in his favor as a matter of law because Plaintiff's claim is barred by sovereign immunity. The trial judge should end civil proceedings when immunity is applicable. Thus, this Court should end these proceedings because Sheriff McNeil is protected by sovereign immunity. Since Sheriff McNeil is protected by sovereign immunity, he is entitled to judgment as a matter of law on Plaintiff's claim.

Conclusion

13. Sheriff McNeil is entitled to sovereign immunity on Plaintiff's claim because the decision to not put Plaintiff in a seatbelt involved a discretionary function. Thus, judgment on the pleadings as a matter of law for Sheriff McNeil is warranted.

WHEREFORE, Defendant Sheriff McNeil is entitled to judgment as a matter of law and the Court should enter judgment on the pleadings in his favor, reserve jurisdiction to determine entitlement to, and to award costs and fees as may be appropriate under Florida law upon an appropriate and timely motion, and grant other and further relief this Court deems proper.

Dated this 9th day of June, 2022.

Respectfully submitted,

/s/ Dawn P. Whitehurst

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of June, 2022, a true and correct copy of the foregoing document was filed via the Florida Court's E-Filing Portal which will furnish copies to all counsel of record.

/s/ Dawn P. Whitehurst

DAWN POMPEY WHITEHURST