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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

SEP - 2 2026

SELDEN JONES
CLERK

RHIANNON BRUNER,

Plaintiff/Appellant,

vs.

THE TOWN OF VALLEY BROOK, a municipal corporation,

Defendant/Appellee.

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Case No. 123,515

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE DON ANDREWS, DISTRICT JUDGE

REVERSED AND REMANDED

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OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Rhiannon Bruner appeals the court's grant of the town of Valley Brook's motion to dismiss her case with prejudice. Upon review, we reverse and remand for further proceedings, finding that Ms. Bruner's amended petition states a claim for relief. She may, therefore, proceed with her tort claim against Valley Brook.

I.

Per her amended petition,[1] on May 2, 2023, Officer John Doe, a Valley Brook officer, pulled over Ms. Bruner claiming she was driving with obstructions to her view. When the officer ran Ms. Bruner's driver's license, he discovered it was revoked. Because of this, and because she had no proof of valid insurance on the vehicle, the officer arrested Ms. Bruner. He transported her to the Valley Brook municipal jail where she was booked and placed into custody. Ms. Bruner subsequently received four citations with all offenses alleged to have occurred in the 1500 block of Southeast 59th Street, which is within the town of Valley Brook. However, it is now agreed, she was actually pulled over in the 1900 block, which was in Oklahoma City, where Valley Brook's officers are without jurisdiction.[2]

Ms. Bruner's amended petition alleges that she was pulled over outside the town of Valley Brook's policing jurisdiction and that it is the Valley Brook police department's custom and practice to enforce the town's municipal ordinances by conducting unlawful traffic stops outside of its jurisdiction. She raised the specific legal theories of assault, false arrest, violation of state

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[1] Ms. Bruner's first petition was dismissed with leave to amend. This appeal relates to the dismissal of her amended petition.

[2] In her response to the motion to dismiss, Ms. Bruner also suggests that the officer falsified the location of the arrest on the citation in order to avoid dismissal of the charges. ROA, Tab 8, pg. 10. That allegation is not contained in the amended petition and thus cannot be considered in deciding a motion to dismiss. *Springs v. Braum's Inc.*, 2022 OK CIV APP 11, ¶ 14, 510 P.3d 864, 870 (noting a trial court errs when it considers "material outside the four corners of the petition" in deciding a motion to dismiss). The falsification allegation is not discussed in the trial court's judgment, and we do not consider it here. Whether or not the officer actually falsified the location of the arrest, and the effect of such an act (if any), are questions that remain open on remand.

constitutional rights, and negligent hiring, retention, training, and supervision. Valley Brook filed a motion to dismiss, claiming that Valley Brook was immune from suit because the arresting officer was acting outside the scope of his employment and because the plaintiff's claims for negligent hiring, retention, training, and supervision fall under 51 O.S. § 155(5), the Oklahoma Governmental Tort Claims Act's discretionary function exemption.

After a hearing on the motion, the court granted the defendant's motion with prejudice. The court specifically found that the plaintiff's claims for assault, false arrest, and violation of state constitutional rights were dismissed because the allegations required the involved officer to have acted outside the scope of his employment pursuant to the definition of "scope of employment" contained within the GTCA. Additionally, the court agreed that the plaintiff's claims for negligent hiring, retention, training, and supervision were dismissed because they fell within the immunity from liability of under 51 O.S. § 155(5). It is from this order that Ms. Bruner appeals.

II.

An order dismissing a case for failure to state a claim upon which relief can be granted is subject to *de novo* review. *Tuffy's, Inc. v. City of Oklahoma City*, 2009 OK 4, ¶ 6, 212 P.3d 1158, 1162. The purpose of a motion to dismiss is to test the law governing the claim, not the underlying facts. *Darrow v. Integris Health, Inc.*, 2008 OK 1, ¶ 7, 176 P.3d 1204. "A motion to dismiss for failure to state a claim upon which relief may be granted will not be sustained unless it should appear without doubt that the plaintiff can prove no set of facts in support of the claim for relief." *Id.* When ruling on a motion to dismiss, we take the plaintiff's allegations as true, along with all reasonable inferences which may be drawn from them. *Great Plains Federal Sav. And Loan Ass'n v. Dabney*, 1993 OK 4, ¶ 2 n.3, 846 P.2d 1088. "A plaintiff is required neither to identify a specific theory of recovery nor to set out the correct remedy or relief to which he may be entitled." *May v. Mid-Century Ins. Co.*, 2006 OK 100, ¶ 10, 151 P.3d 132. "If relief is possible under any set of facts which can be established as is consistent with the allegations, a motion to dismiss should be denied." *Id.*

III.

A.

Oklahoma jurisprudence utilizes the transactional approach for its definition of a "cause of action." *Rodgers v. Higgins*, 1993 OK 45, ¶ 4, 871 P.2d 398. "A cause of action embodies all theories of recovery or damages which emanate from one occurrence or transaction." *Teel v. Pub. Serv. Co. of Oklahoma*, 1985 OK 112, ¶ 9, 767 P.2d 391, 395. Thus, while set forth as five separate "claims" or theories of recovery, we read the plaintiff's amended petition as presenting a single cause of action related to the events described above. Accordingly, we will determine whether Ms. Bruner pled any set of facts entitling her to relief. If she did, the dismissal was error, regardless of whether certain theories of recovery are ultimately sustainable.

B.

In its order, the trial court stated that the allegations contained in the petition required the arresting officer to have acted outside the scope of his employment pursuant to the definition of "scope of employment" contained in the Oklahoma's Governmental Tort Claims Act. Upon review of the petition and the relevant caselaw addressing the scope of one's employment under the GTCA, we disagree.

Oklahoma's GTCA is the exclusive remedy for an injured plaintiff to recover against a governmental entity in tort. *Nail v. City of Henryetta*, 1996 OK 12, ¶ 10, 911 P.2d 914, 917. Subject only to the GTCA's specific limitations and exceptions, governmental immunity is waived and governmental accountability is extended to torts for which a private person would be liable, unless they are committed outside of the course and scope of one's employment or unless they are committed in bad faith or in a malicious manner. *Id.* "Scope of employment" is defined as "performance by an employee acting in good faith within the duties of the employee's office or employment or of tasks lawfully assigned by a competent authority including the operation or use of an agency vehicle or equipment with actual or implied consent of the supervisor of the employee, but shall not include corruption or fraud." 51 O.S. § 152(13). Oklahoma law recognizes the applicability of the doctrine of respondeat superior to the GTCA and, under the theory of respondeat superior, one acts within the scope of employment if engaged in work assigned, or if doing that which is proper, necessary and usual to accomplish the work assigned, or doing that which is customary within the particular trade or business. *Nail v. City of Henryetta*, 1996 OK 12, ¶ 11, 911 P.2d 914, 917.

The premise of the plaintiff's tort claim is that she was unlawfully arrested by a Valley Brook police officer who was acting outside of his jurisdiction. In its motion to dismiss, Valley Brook alleged that the mere fact that the police officer was acting outside of his jurisdiction meant he was acting outside the scope of his employment. We find the Oklahoma Supreme Court's holding in *Rodebush v. Oklahoma Nursing Homes, Ltd.*, 1993 OK 160, 867 P.2d 1241, instructive here. The Court states:

> As a general rule, it is not within the scope of an employee's employment to commit an assault upon a third person. However, this general rule does not apply when the act is one which is fairly and naturally incident to the business, and is done while the servant was engaged upon the master's business and be done, although mistakenly or ill advisedly, with a view to further the master's interest, or from some impulse of emotion which naturally grew out of or was incident to the attempt to perform the master's business. An employee's act is within the scope of employment if it is incident to some service being performed for the employer or arises out of an emotional response to actions being taken for the employer. In such an instance, an employer can be held liable even if the employee acts beyond the given authority. It is the burden of the plaintiff to show that the employee was acting within the scope of his employment.

Id. ¶ 12 (citations and internal quotation marks omitted). The plaintiff alleged that a Valley Brook police officer, driving a Valley Brook police vehicle and wearing a police officer's uniform, pulled her over for a traffic stop. Although it is not normally within the scope of a police officer's employment to commit an assault, to falsely arrest, or otherwise violate an individual's constitutional rights, "this general rule does not apply when the act is one which is fairly and naturally incident to the business, and is done while the servant was engaged upon the master's business to be done." *Id.*

Here, the plaintiff's amended petition states that officer Doe pulled her over, an act that is undoubtedly naturally incident to the business of being a police officer, and was done while the officer was engaged in his employer's business, that is, protecting the town and ensuring the safety of its citizens. Further, *Rodebush* provides that an employer can be held liable "even if the employee acts beyond the given authority." *Id.* Under these circumstances, the fact that the officer pulled Ms. Bruner over outside his jurisdiction does not negate the town's liability for the officer's actions.

The Supreme Court has determined in several cases that whether a police officer's actions were taken within the scope of their employment is a question for the jury unless only one reasonable conclusion can be drawn from the facts alleged. *Tuffy's, Inc. v. City of Oklahoma City*, 2009 OK 4, ¶ 20, 212 P.3d 1158, 1167. For example, in *Nail v. City of Henryetta,* 1996 OK 12, 911 P.2d 914, a police officer pushed a handcuffed boy to the ground, causing a broken nose, cuts, and bruises. The boy's mother sued the City of Henryetta on the theory that the officer either maliciously or negligently injured the boy by using excessive force. *Id.* ¶ 4. The Court ultimately held that arresting the boy was clearly within the scope of employment but clarified that it was a jury question whether the officer's actions later went beyond the scope of his employment. *Id.* ¶ 13. Further, in *Tuffy's*, 2009 OK 4, an owner of a nightclub and its president filed suit against the city, asserting claims for negligence and tortious interference with a business relationship arising out of incident at nightclub in which city police officers allegedly attacked, harassed, and assaulted customers.

Id. ¶ 2. The Court ultimately held that "it is a jury question concerning whether the police officers were negligent when removing customers from the nightclub and, if so, whether the officers were acting within the scope of their employment." *Id.* ¶ 20.

In light of the foregoing and the facts pled in Ms. Bruner's amended petition, we find that the question of whether the officer was acting within the scope of his employment cannot properly be decided at the dismissal stage.[3] The fact that the arrest occurred outside of the Valley Brook jurisdiction does not automatically render the action taken by the police officer outside the scope of his employment, especially when all other aspects of their encounter seemed to constitute a regular stop and arrest, and it is alleged the officer was acting under the authority vested in him by his employer. Accordingly, we find that it was error for the court to dismiss Ms. Bruner's petition on the basis that the officer was not acting within the scope of his employment.

C.

In its motion to dismiss, Valley Brook also alleged that plaintiff's specific legal theories such as assault and false arrest contained elements of bad faith or malice and these "theories" must therefore be dismissed. However, we do not

[3] Indeed, several federal courts in our state have also plainly stated that while "the issue of what actions are taken within the scope of employment 'may be adjudicated upon consideration of a summary judgment motion, it cannot properly be determined in a motion to dismiss.'" *Neuendorf v. Faxon*, 25-CV-0086-CVE-MTS, 2026 WL 575228, at *7 (N.D. Okla. Mar. 2, 2026) (citing *Pendegraft v. Bd. of Regents of Okla. Colls.*, No. 18-CV-793-D, 2019 WL 3806639, at *6 (W.D. Okla. Aug. 13, 2019); *Yelton v. Bd. of Cnty. Comm'rs of Can. Cnty.*, No. 21-CV-1001-G, 2024 WL 4406956, at *6 (W.D. Okla. Mar. 18, 2024); *Melton v. Okla. ex rel. Univ. of Okla.*, 532 F. Supp. 3d 1080, 1092 (W.D. Okla. 2021)).

agree that the elements of these torts necessarily include that the actions be taken in bad faith. As to assault and battery, the Oklahoma Supreme Court has held that each tort "enjoys an independent existence as a common-law cause of action *ex delicto* (regardless of the victim's gender *and of the motivation for the offensive conduct*)." *Brown v. Ford*, 1995 OK 101, ¶ 11, 905 P.2d 223, 229–30 *overruled on other grounds by Smith v. Pioneer Masonry, Inc.*, 2009 OK 82, ¶ 11, 226 P.3d 687 (footnote removed). The intent necessary for assault or battery is not a malicious intent, but the intent to do the act that causes the wrongful harm. For example, "'[a]n infant who forceably invades the person of another is liable for a battery regardless of an intent to inflict injury; the only intent which is necessary is that of doing the particular act in question ...." *Keel v. Hainline*, 1958 OK 201, ¶ 4, 331 P.2d 397, 399 (quoting *Singer v. Marx*, 301 P.2d 440, 442 (Cal. App. 1956). *See generally*, Restatement (Second) of Torts § 8A (1965) ("'Intent,' as it is used throughout the Restatement of Torts, has reference to the consequences of an act rather than the act itself."); *id.* § 13 (Battery: Harmful Contact) ("If an act is done with the intention described in this Section, it is immaterial that the actor is not inspired by any personal hostility to the other, or a desire to injure him.").

Likewise, a false arrest is merely "the unlawful restraint of an individual against his will." *Irwin v. SWO Acquisition Corp.*, 1992 OK CIV APP 48, ¶ 13, 830 P.2d 587, 590 (*citing Alsup v. Skaggs Drug Center*, 1949 OK 136, 223 P.2d 530). "Plaintiff, in an action for false arrest has the burden of proving lack of probable cause for bringing a criminal action against him and is required to prove lack of probable cause." *Id.* ¶ 12. No element of bad faith or malice is included. *See also Restatement (Second) of Torts* § 35 (1965) (defining "false imprisonment" without any element of malice or bad faith). As such the trial court erred in dismissing the plaintiff's amended petition on the basis that it failed to state a claim for either assault or false arrest because no element of bad faith was pled. Because those torts do not require any such element, the trial court erred in this regard.

D.

The court also dismissed the plaintiff's amended petition based on § 155(5) of the GTCA, which provides that a political subdivision cannot be liable for "[p]erformance of or the failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees." In its motion to dismiss, Valley Brook argued that the hiring, retention, training, and supervision of employees falls under this discretionary-function exemption and thus precludes it from liability. The trial court agreed.

In at least one sense, the trial court is correct. The plaintiff in this case has no direct cause of action related to who Valley Brook hires, how Valley Brook trains its employees, or how Valley Brook supervises those employees. However, as noted above, this is not what the Ms. Bruner is suing for here. She is suing for the alleged torts committed against her on May 2, 2023. While the alleged negligent hiring, training, and supervision might be one *cause* of these torts, they are not in and of themselves, actionable.

While her claims of negligent hiring and the like are not properly pled as separate torts, because Ms. Bruner's amended petition stated a claim, as reflected above, the trial court erred in dismissing her suit on this basis. *Darrow v. Integris Health, Inc.*, 2008 OK 1, ¶ 7, 176 P.3d 1204 ("A motion to dismiss for failure to state a claim upon which relief may be granted will not be sustained unless it should appear without doubt that the plaintiff can prove no set of facts in support of the claim for relief."). We cannot affirm an order granting a motion to dismiss when a petition states a claim for relief just because one of the plaintiff's legal theories is not viable.[4]

* * *

Upon careful review, we reverse the trial court's dismissal of Ms. Bruner's amended petition and remand the cause for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

BARNES, J., and HUBER, J., concur.

September 2, 2026

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[4] Similarly, we express no opinion on the plaintiff's ability to prosecute a claim for money damages based on an alleged violation of her state constitutional rights. Because the plaintiff clearly states a claim for relief as indicated above, we need not address the viability of this specific legal theory at as this stage.