

<b>DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO</b> Larimer County Justice Center 201 LaPorte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 970-494-3500	
<b>Plaintiff:</b>  STACY LYNNE,  v.  <b>Defendants:</b>  NOAH BEALS	<b>▲ COURT USE ONLY ▲</b>  <b>Case Number:</b> 2018 CV 220  <b>Courtroom:</b> 3C
<b>ORDER DENYING PLAINTIFF'S MOTION FOR POST-TRIAL RELIEF</b>	

THIS MATTER is before the court on Plaintiff's motion for post-trial relief under C.R.C.P. Rule 59. The Court has reviewed the motion, response and reply. After careful consideration, the Court finds and orders as follows:

**BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff filed her Complaint on December 4, 2018, asserting a claim for defamation against Defendant Beals. Defendant filed a motion to dismiss for lack of subject matter jurisdiction and a request for attorney's fees on January 11, 2019. In its order dated April 3, 2019 the Court granted Defendant Beals' motion to dismiss under C.R.C.P. Rule 12(b)(1) finding that the Plaintiff had failed to sufficiently plead facts to support a finding that the Court had subject matter jurisdiction. Specifically, the Court determined in its April 3, 2019 Order that Plaintiff

failed to plead that Mr. Beals' statements were "willful and wanton." The court further determined that Plaintiff failed to allege in her Complaint that Defendant Beals' statements were made with "actual malice." Finding that Plaintiff failed to sufficiently plead her claim, the Court dismissed this matter, without prejudice.

#### **PLAINTIFF'S MOTION FOR POST-TRIAL RELIEF UNDER C.R.C.P. RULE 59<sup>1</sup>**

In her motion for post-trial relief under C.R.C.P. Rule 59 Plaintiff asserts that she correctly plead her claims and that her pleading asserts the required factual allegations to establish both that Defendant Beals acted willfully and wantonly and that his statements were made with "actual malice." as required under the Colorado Governmental Immunity Act ("CGIA"). The court determined that Plaintiff's claim against Defendant Beals should be dismissed under C.R.C.P. Rule 12(b)(1) for lack of subject matter jurisdiction.<sup>2</sup>

#### **LEGAL STANDARD**

Under the CGIA, a public employee is "immune from liability in any claim for injury...which lies in tort...which arises out of an act or omission of such employee occurring during the performance of his duties and within the scope of his employment unless the act or omission causing such injury was willful and wanton." C.R.S. § 24-10-118(2)(a) (emphasis added). When a governmental entity or employee raises the defense of immunity under the CGIA, the district court must make factual findings to ensure that the court has jurisdiction to hear the case. *City and County of Denver v. Dennis*, 418 P.3d 489, 494 (Colo. 2018). When a plaintiff sues a governmental entity or employee and that entity or employee moves to dismiss

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<sup>1</sup> It is not entirely clear to the Court whether a Rule 59 motion is the appropriate avenue to challenge the Court's order which dismissed Plaintiff's Complaint, without prejudice.

for lack of jurisdiction, the plaintiff has the burden of proving jurisdiction. *Id.* Plaintiff is afforded the reasonable inferences from her undisputed evidence. *Id.*

In any action where allegations are made that the public employees' acts or omissions were willful and wanton, the specific factual basis of such allegations shall be stated in the complaint. *Gray v. University of Colorado Hosp. Authority*, 284 P.3d 191, 198 (Colo. App. 2012). Conclusory allegations are insufficient. *Id.* C.R.S. § 24-10-110(5) provides, in relevant part:

(a) In any action in which allegations are made that an act or omission of a public employee was willful and wanton, the specific factual basis of such allegations shall be stated in the complaint.

(b) Failure to plead the factual basis of an allegation that an act or omission of a public employee was willful and wanton shall result in dismissal of the claim for failure to state a claim upon which relief can be granted.

Under the CGIA, waivers of immunity for acts or omissions that are “willful and wanton” only apply to public employees, not to public entities. *Gray* at 196. The phrase “willful and wanton” is not defined in the CGIA. However, a number of courts to address the issue have applied the definition set forth in Colorado's exemplary damages statute, C.R.S. § 13-21-102. The statute defines willful and wanton conduct as “conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others, particularly the plaintiff.” *Id.*; see *Moody v. Ungerer*, 885 P.2d 200, 205 (Colo. 1994); see also *Navratil v. Parker*, 726 F.Supp. 800, 805 (D. Colo. 1989) (applying Colorado law, district court held that defendant would only be liable for willful and wanton conduct if he acted with the intent to injure, or in conscious disregard of the probability that his acts would result in injury to the plaintiff). At a minimum, the complaint must allege “specific facts to support a reasonable inference that the employee was acting with a

conscious disregard of the probability that the employee's acts would result in injury to the plaintiff.

### **DISCUSSION**

In its order dated April 3, 2019, the Court determined that Plaintiff failed to meet the pleading requirements set forth in the caselaw and as required under C.R.S. § 24-10-110(5). The Court specifically determined that Plaintiff failed to specifically allege in her Complaint that the actions of Defendant Beals were willful or wanton.<sup>3</sup> Further, the Court determined that Plaintiff's Complaint failed to allege specific facts to support a conclusion that Beals' actions were willful and wanton. Ultimately, the Court determined that Plaintiff's Complaint failed to meet the pleading requirements of the CGIA which requires that Plaintiff allege specific facts to support a reasonable inference that the employee was consciously aware or was acting with a conscious disregard of the probability that the employee's acts would result in injury to Plaintiff. C.R.S. § 24-10-110(5); *L.J. v. Carricato*, 413 P.3d 1280, 1288 (Colo. App. 2018).

In her motion seeking relief under C.R.C.P. 59 Plaintiff simply restates the arguments previously rejected by the Court. Accordingly, the Court denies Plaintiff's request for post-trial relief under C.R.C.P. 59. Further, while Plaintiff again requests an evidentiary hearing to provide support for her pleading, the Court has determined that there is no material factual dispute as to the statements alleged to be made by Defendant Beals. Accordingly, an evidentiary hearing would not address the insufficiency of the Plaintiff's pleading.

### **ORDER**

Plaintiff's motion for post-trial relief under C.R.C.P. Rule 59 is hereby denied.

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<sup>3</sup> Plaintiff does set forth in her Complaint case law as to what "willful and wanton" conduct encompasses, but never alleges in the Complaint that Beals' actions were willful and wanton.

SO ORDERED: June 2, 2019.



BY THE COURT:

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Stephen J. Jouard  
District Court Judge