

IN THE COMMON PLEAS COURT  
LAWRENCE COUNTY, OHIO

JOSE DECASTRO.

*Plaintiff,*

v.

IRONTON POLICE DEPARTMENT,  
*ET AL.*,

*Defendants.*

: Case No. 22OC000178  
: Judge Andrew P. Ballard  
: DEFENDANT IRONTON POLICE  
: DEPARTMENT'S MOTION TO  
: DISMISS PLAINTIFF'S COMPLAINT  
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Now comes the Ironton Police Department, by and through counsel, and hereby moves this Court to dismiss Plaintiff's Complaint pursuant to Civ. R. 12(b)(6) for failure to state a claim upon which relief can be granted. This motion is fully supported in the accompanying memorandum.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

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## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION**

Plaintiff Jose DeCastro (“Plaintiff”) filed his Complaint in this case on March 29, 2022 against numerous defendants, including the Ironton Police Department (“Defendant”). Although ambiguous, it appears that Plaintiff is alleging defamation against Defendant. For instance, Plaintiff alleges that “[a]ll defendants have committed slander and/or libel or is in someway liable for said slander and/or libel.” (Complaint, ¶ 7). This appears to be based on Plaintiff’s claim that, on March 25, 2022, Defendant allegedly reported that Plaintiff “had sent a ‘concerning video’ to a student or parent, which caused the school to go into lockdown.” (Id., ¶ 1). Plaintiff further claims that this alleged “false information provided by the Ironton Police Dept and NEWS nearly caused [a] stranger to take violent actions upon plaintiff.” (Id., ¶ 3).

As explained herein, Plaintiff’s claims against Defendant Ironton Police Department are without merit, as Defendant is a City Police Department and is not *sui juris*. Notwithstanding, even if Plaintiff had filed suit against the City of Ironton, which he has not, the City would be entitled to immunity pursuant to R.C. 2744 *et seq.*, thus any attempt to amend would be futile. Furthermore, Plaintiff’s Complaint should be dismissed/stricken because it does not comply with Rules 10(A) and 11 of the Ohio Rules of Civil of Procedure.

### **II. LAW AND ARGUMENT**

#### **A. Standard of Review**

A motion to dismiss for failure to state a claim upon which relief may be granted tests the sufficiency of a complaint. *Volbers-Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 11. When reviewing a motion to dismiss, a court should presume all factual allegations made in the complaint to be true, and all reasonable inferences must be

resolved in favor of the nonmoving party. *Roberts v. Columbus City Police Impound Div.*, 195 Ohio App.3d 51, 2011-Ohio-2873, 958 N.E.2d 970, ¶ 18 (10th Dist.); *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). However, a court need not accept as true any unsupported or conclusory allegations advanced in the complaint. *Rooney v. Ohio State Highway Patrol*, 2017-Ohio-1123, 87 N.E.3d 777, ¶ 14 (10th Dist.). A Rule 12(b)(6) motion is properly granted when it appears beyond a doubt from the complaint that the plaintiff can prove no set of facts entitling it to recovery. *Volbers-Klarich*, ¶ 12; *see also O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus.

**B. The Ironton Police Department is not *sui juris*, and therefore, cannot be sued.**

It is well-established that “a plaintiff must demonstrate that a named party has the legal capacity to sue and to be sued; in other words, that the party is *sui juris*.” *McConnell v. Dudley*, 2018-Ohio-341, 106 N.E.3d 180, ¶ 13 (7th Dist.), citing *Richardson v. Grady*, 8th Dist. Nos. 77381, 77403, 2000 WL 1847588, \*2 (Dec. 18, 2000). Additionally, “[t]he case law is clear a township or city police department is not *sui juris*.” *Pinkins v. Mahoning County Task Force*, 2021-Ohio-2414, 176 N.E.3d 76, ¶ 20 (7th Dist.); *see also, e.g., McConnell*, ¶ 13, quoting *Cooper v. Youngstown*, 7th Dist. 15 MA 0029, 2016-Ohio-7184, 2016 WL 5874642, ¶ 26 (“A city police department is not *sui juris*; the real party in interest is the city itself.”); *Richardson v. Grady*, 8th Dist. Nos. 77381, 77403, \*2 (Dec. 18, 2000) (dismissing the Lebanon Police Department from suit because it is not an entity with the capacity to be sued).

Following this well-established Ohio case law, the Ironton Police Department, as a department within the City, is not the proper party against whom suit may be filed. Accordingly, because the Ironton Police Department is not *sui juris*, it is entitled to judgment as a matter of law.

**C. Even if Plaintiff named the City of Ironton as a party to the Suit, it would be entitled to immunity under R.C. 2744.01 *et seq.***

It is important to first emphasize that Plaintiff has not named the City of Ironton as a party to this suit. Nevertheless, as previously explained, “[a] city police department is not *sui juris*; the real party in interest is the city itself.” *Parmelee v. Schnader*, 7th Dist. Mahoning No. 17 MA 0026, 2018-Ohio-707, ¶ 39, citing *Cooper v. Youngstown*, 7th Dist. Mahoning No. 15 MA 0029, 2016-Ohio-7184, ¶ 26. Given that Plaintiff has not sued the City of Ironton, the Ironton Police Department is entitled to judgment as a matter of law, as it is not *sui juris*. *See supra*. Nevertheless, even if Plaintiff had sued the City of Ironton, or sought to amend to add the City, it would be immune from liability, as explained below.

Ohio Revised Code Chapter 2744 “addresses when political subdivisions, their departments and agencies, and their employees are immune from liability for their actions.” *Lambert v. Clancy*, 125 Ohio St.3d 231, 2010-Ohio-1483, 927 N.E.2d 585, ¶ 8. In analyzing whether a political subdivision is immune from liability under R.C. Chapter 2744, courts conduct a three-tiered analysis. *Elston v. Howland Local Schools*, 113 Ohio St.3d 314, 2007-Ohio-2070, 865, ¶ 10. Under the first tier, R.C. § 2744.02(A)(1), which is generally referred to as the “blanket immunity” provision, a political subdivision is “not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.” R.C. § 2744.02(A)(1); *Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003-Ohio-3319, 701 N.E.2d 781, ¶ 7. Under the second tier of the analysis, a court must determine whether any of the five exceptions to immunity listed in R.C. § 2744.02(B) apply to expose the political subdivision to liability. *Elston*, ¶ 11. If none of those exceptions to immunity apply, the political subdivision is immune. However, if one of the exceptions apply, a court must determine whether

there are any applicable defenses in R.C. § 2744.03 that would reinstate the political subdivision's immunity.

Here, the City of Ironton is clearly a political subdivision as defined in R.C. 2744.01(F). Further, based upon the allegations in Plaintiff's Complaint, the actions taken by Ironton Police Department involve their report that Plaintiff had sent a concerning video to a student or parent, which caused the school to go into lockdown. This would clearly constitute a governmental function. For instance, pursuant to R.C. 2744.01(C)(2)(a), “[t]he provision or nonprovision of police . . . services or protection” is specifically identified as a governmental function. R.C. 2744.01(C)(2)(a); *see also* R.C. 2744(C)(2)(i) (stating that “[t]he enforcement or nonperformance of any law” is also a governmental function). Clearly investigating and reporting on a concerning and/or suspicious video that may have been sent to children while at school falls within the services and/or protection offered by a city's police department. *See, e.g., Tabernacle of Prayer Church v. Columbus*, 114 Ohio App.3d 673, 676, 683 N.E.2d 873 (10th Dist. 1996) (holding that a “police investigation of possible violations . . . is an exercise of a governmental function); *Spain v. Bentleyville*, 8th Dist. Cuyahoga No. 92378, 2009-Ohio-3898, ¶ 6 (holding that an officer was performing a governmental function when he fulfilled his police patrol duties). Accordingly, because this constitutes a governmental function, the City would be entitled to the “blanket immunity” provision under R.C. § 2744.02(A)(1).

Turning to the second tier of the immunity analysis, none of the five exceptions to immunity listed in R.C. § 2744.02(B) would apply to expose the political subdivision to liability. *See Gentile v. Mill Creek Metropolitan Park Dist.*, 7th Dist. Mahoning No. 98 CA 254, 2000 WL 816879, \*3 (June 20, 2000) (“Pursuant to R.C. 2744.01(C)(2)(a), the provision or non-provision of police services or protection is a governmental function and does not fall within any of the

exceptions listed in R.C. 2744.02(B).") (emphasis added), citing *Drexler v. Greater Cleveland Regional Transit Auth.*, 80 Ohio App.3d 367, 372 (8th Dist. 1992). Those exceptions are as follows:

- (1) [I]njury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. . . .
- (2) [I]njury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions. . . .
- (3) [I]njury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads . . . .
- (4) [I]njury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function . . . .
- (5) [I]njury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code.

R.C. § 2744.02(B)(1)-(5). Of these five exceptions, those contained in R.C. § 2744.02(B)(1), (3) and (4) bear no relation to Plaintiff's allegations, and therefore, are inapplicable. Further the exception contained in R.C. § 2744.02(B)(2) does not apply here either because, as previously explained, the allegations in Plaintiff's Complaint involving the Ironton Police Department clearly involve a governmental function—i.e., the provision or nonprovision of police services—not a proprietary function. Finally, with regard to the exception contained in R.C. § 2744.02(B)(5), Plaintiff has not alleged, nor could he show, that civil liability is expressly imposed upon the City by a section of the Revised Code.

Thus, it is clear that none of the R.C. § 2744.02(B) exceptions would apply in this case. Consequently, although Plaintiff has not named the City of Ironton as a party to this suit, even if he had, the City would be immune from liability.

**D. Notwithstanding, Plaintiff's Complaint should be dismissed/stricken for failing to comply with Rules 10(A) and 11 of the Ohio Rules of Civil Procedure, and for failing to allege any damages.**

Plaintiff's Complaint does not comply with Rules 10(A) and 11 of the Ohio Rules of Civil Procedure, nor does it allege any damages. As explained below, each of these failures serve as an independent ground for dismissing Plaintiff's Complaint.

Civ. R. 10(A) provides as follows:

Every pleading shall contain a caption setting forth the name of the court, the title of the action, the case number, and a designation as in Rule 7(A). In the complaint the title of the action shall include the names and addresses of all parties, but in other pleadings, it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

Civ. R. 10(A) (emphasis added). In construing this provision, the Ohio Supreme Court has held that "failure to list the proper parties and their respective addresses in the case caption renders a habeas petition or complaint defective." *Kneuss v. Sloan*, 146 Ohio St.3d 248, 2016-Ohio-3310, 54 N.E.3d 1242, ¶ 11. Consequently, courts have consistently held that failure to comply with Civ. R. 10(A) warrants dismissal. *Id.*; *see also State ex rel. Sherrills v. State*, 91 Ohio St.3d 133, 133, 742 N.E.2d 651 (2001) (upholding the dismissal of a complaint for failure to name the proper parties and their addresses as required under Civ. R. 10(A)); *In re Collado*, 8th Dist. Cuyahoga No. 110048, 2020-Ohio-5337, ¶ 9 ("The failure to comply with Civ. R. 10(A) warrants dismissal."), citing *Nikooyi v. Cuyahoga Cty. Prosecuting Dept.*, 8th Dist. Cuyahoga No. 109716, 2020-Ohio-3730, ¶ 6; *Simmons v. Saffold*, 8th Dist. Cuyahoga No. 94619, 2010-Ohio-918, ¶ 2 ("[F]ailure to properly caption the complaint [pursuant to Civ. R. 10(A)] warrants dismissal").

Here, Plaintiff's Complaint fails to comply with Civ. R. 10(A) in that it does not set forth the name of this Court, nor does it provide the addresses of any of the parties, including Plaintiff's. Accordingly, based on clear precedent, such a failure warrants dismissal of Plaintiff's Complaint.

Notwithstanding, Plaintiff's Complaint also fails to comply with Civ. R. 11. That Rule provides in relevant part:

A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the party's address. A party who is not represented by an attorney may further state a facsimile number or e-mail address for service by electronic means under Civ. R. 5(B)(2)(f). . . . The signature of an attorney or *pro se* party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served.

Civ. R. 11 (emphasis added). Courts have held that failure to comply with this provision is a ground for striking a Complaint. *See, e.g., Thacker v. Clark Cty. Commrs.*, 2d Dist. Clark No. 08-CA-30, 2009-Ohio-1967, ¶ 22 (striking a *pro se* plaintiff's complaint because it was not signed as required under Civ. R. 11).

Here, Plaintiff has not signed his Complaint. Additionally, as previously noted, Plaintiff did not state his address, nor the address of any of the other parties to this action in his Complaint. Consequently, pursuant to Civ. R. 11, these failures serve as a ground for striking Plaintiff's Complaint.

Finally, Plaintiff has not alleged any damages in his Complaint. "The general rule is that if a complaint fails to allege damages, for which a complainant believes himself entitled to compensation, then a cause of action is not stated." *Snouffer v. Snouffer*, 4th Dist. Meigs No. 92 CA 499, 1993 WL 248603, \*4 (July 9, 1993), citing 30 Ohio Jurisprudence 3d (1981) 172, Damages, Section 164. As such, failure to allege any damages is grounds for dismissing a complaint. *Diprima v. A.W. Tavern, Inc.*, 96 Ohio App.3d 470, 474-75, 645 N.E.2d 156 (8th Dist. 1994), citing *Jemo Assoc., Inc. v. Garman*, 70 Ohio St.2d 267, 436 N.E.2d 1353 (1982) ("[F]ail[ure] to allege any actual damages is inconsistent with the pleading requirements of Civ.

R. 54(C) and 8(A) and could be properly dismissed for failure to state an actionable claim as the only damages recoverable are zero.”); *Alex-Bell Oxford Limited Partnership v. Woods*, 2d Dist. Montgomery No. 16038, 1998 WL 289028, \*5 (June 5, 1998) (“The Rules of Civil Procedure require a prayer for damages as a prerequisite for relief. Failure to allege any damages is proper grounds for dismissing a claim.”). Thus, because Plaintiff has not alleged any damages in his Complaint, this serves as yet another ground to dismiss his Complaint.

### **III. CONCLUSION**

In light of the foregoing, Defendant Ironton Police Department respectfully requests that this Court grant its Motion to Dismiss, and dismiss Plaintiff’s claims addressed herein, with prejudice.

Respectfully submitted,

SURDYK, DOWD & TURNER CO., L.P.A.

/s/ Dawn M. Frick

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2022, the foregoing was served via the Court's electronic filing system, where applicable, and via regular mail, to the following:

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