

IN THE UNITES STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CEDRIC McMILLIAN : CIVIL ACTION
 :
v. :
 :
PHILADELPHIA NEWSPAPERS, INC., : NO. 99-2949
et al. :
O'NEILL, J. : MARCH , 2001

MEMORANDUM

Plaintiff Cedric McMillian, a former school bus driver, brings this action against the City of Philadelphia; the Philadelphia School District; Philadelphia Newspapers, Inc., owner of the Philadelphia Daily News; and three Daily News reporters –Mann Frisby, Gloria Campisi, and April Adamson.¹ Presently before me are defendants’ motions for summary judgment and plaintiff’s responses thereto.

BACKGROUND

Plaintiff was formerly a school bus driver employed by a private company which provided transportation for students in the Philadelphia School District. On the afternoon of March 10, 1998, he was assigned a bus route serving approximately thirty middle school students ranging in age from eleven to thirteen. According to McMillian, soon after the bus left the school the students became unruly. Although the school district normally supplied a bus matron for this route to help keep the students under control, none was on board on March 10, 1998.

¹ Philadelphia Newspapers, Inc. and the three Daily News reporters are collectively referred to in this opinion as the “PNI defendants.”

Plaintiff contends that as a result he was unable to restore order on the bus and asserts he was threatened and physically assaulted by the students.

While driving, plaintiff asserts he flagged down a Philadelphia police officer and asked for assistance. According to McMillian, the officer stated that he would turn his car around and return to help; however, he did not do so. Plaintiff also maintains that he made multiple radio requests for help from the school district but none arrived. In an apparent attempt to punish the children for their behavior and/or somehow restore order, during this period plaintiff refused to allow any of the children to disembark at any of the route's designated stops. He simply drove the bus past the drop-off points, in some cases right by parents waiting to meet their children. Since McMillian refused to let them out through the front door a number of children exited through the rear emergency exit. Finally, more than an hour after plaintiff first requested assistance, the bus was pulled over by the police. According to plaintiff, the school district supervisor asked that he be placed under arrest for driving under the influence. He was charged with D.U.I. and twenty-nine counts of unlawful imprisonment and unlawful restraint. The DUI charge was later dropped after plaintiff tested negative for drugs and alcohol. Over the course of the next several months, the Philadelphia Daily News published several articles regarding the incident.

On June 10, 1999, McMillian brought suit against defendants on a number of different grounds including defamation, interference with existing and prospective economic advantage, tortious interference with contract, and violation of his rights under both the United States and Pennsylvania Constitutions. On August 3, 1999 I dismissed plaintiff's state law claims against

the City based on governmental immunity.² On November 15, 1999, I dismissed some of plaintiff's defamation claims against the PNI defendants, and on June 1, 2000, I dismissed plaintiff's claims for interference with existing and prospective economic advantage. Remaining before me are: (1) a defamation claim against the PNI defendants based on a report appearing in a newspaper on March 11, 1998, that characterized the incident as a "drug-crazed. . . ride"; (2) a claim under 42 U.S.C. § 1983 against the City based on an alleged policy of failing to administer field sobriety tests prior to making arrests for D.U.I.; and (3) a claim of malicious defamation against the School District.

STANDARD OF REVIEW

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). My task is not to resolve disputed issues of fact, but to determine whether there exists any factual issues to be tried. See Andersen v. Liberty Lobby, Inc., 477 U.S. 242, 247-49 (1986). In making this determination, all of the facts must be viewed in the light most favorable to the non-moving party. Id. at 248. However, the non-moving party must raise "more than a mere scintilla of evidence in its favor" in order to overcome a summary judgment motion, and cannot survive by relying on unsupported assertions, conclusory allegations, or mere suspicions. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir.

² Contrary to the assertion of the PNI defendants in their brief accompanying their motion for summary judgment, the state law claims against the School District were not dismissed by this Order. (PNI's Mem. in Supp. of Mot. for S. J. at 3 n.1).

1989). “[I]f the opponent [of summary judgment] has exceeded the ‘mere scintilla’ [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant’s version of events against the opponent, even if the quantity of the movant’s evidence far outweighs that of its opponent.” Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir.1992).

DISCUSSION

I. Section 1983 Claim Against the City

McMillian contends that the various allegations contained in Count III of his amended complaint establish a deliberate indifference on the part of the City to his rights under the Equal Protection Clause of the Fourteenth Amendment³ in violation of 42 U.S.C. § 1983.⁴ These allegations include: (1) the “City as a matter of custom, matter and practice, has intentionally and deliberately failed to adequately train, supervise, discipline or otherwise direct police officers. . . concerning D.U.I., the requirements for constitutional arrest, and the publishing of unproven claims”; (2) the “City as a matter of custom, matter and practice, has intentionally and deliberately failed to establish any mechanism for investigating,. . . or reviewing allegations of D.U.I. and. . . resulting arrests. . . thereby causing the individual defendants in this case to engage

³ I was unable to discover any explanation in the materials submitted by plaintiff as to how the Equal Protection Clause is implicated in this case. However I will not dismiss plaintiff’s claim on this ground, and instead will read Count III as alleging a violation of plaintiff’s Fourth Amendment right to be free from arrest without probable cause.

⁴ 42 U.S.C. § 1983 provides in relevant part: “Every person . . . who subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws [of the United States], shall be liable to the party injured.”

in unlawful and constitutionally impermissible conduct”; (3) the “City as a matter of custom, matter and practice, has intentionally and deliberately failed to sanction or discipline police officers. . . who violate the laws of this Commonwealth and the Supreme Court of the United States”; and (4) the City’s “highest policy making officials. . . and or their delegates. . . have had actual or constructive knowledge of the constitutional violations and falsity of allegations against. . . McMillian and have failed to take appropriate sanctions. . .thereby condoning. . . and participating in the pattern of illegal arrest and defamation of [p]laintiff.” (Pl. Comp. at ¶¶ 81-86).

A public entity may not be held liable under section 1983 unless “the alleged unconstitutional action executes or implements policy or a decision officially adopted or promulgated by those whose acts may fairly be said to represent official policy.” Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir.1997), citing Monell v. New York Dep’t of Soc. Serv., 436 U.S. 658, 690-91 (1978). In the absence of an affirmative policy or custom, a failure to train employees can serve as the basis of section 1983 liability “where the failure to train amounts to deliberate indifference to the rights of persons with whom the municipal employees come into contact.” Reitz, 125 F.3d at 145 (quoting Canton v. Harris, 489 U.S. 378, 388 (1989) (internal citations, punctuation omitted). With respect to the failure to train, the Court of Appeals has noted that “[e]stablishing municipal liability on a failure to train claim under § 1983 is difficult.” Reitz, 125 F.3d at 145.

The focus in this determination is on the adequacy of the training program in relation to the tasks the particular officers must perform and the connection between the identified deficiency in the municipality’s training program and the ultimate injury. To succeed on a § 1983 claim, the party must prove that the

training deficiency actually caused the injury.

Id.

The City moved for summary judgment on the ground that plaintiff has taken no discovery concerning the customs, policies, or practices of the City or its Police Department, and can therefore not establish a pattern of deliberate indifference on the part of the City. Plaintiff disagrees, asserting that he can establish that the City has a policy of not training police to use field sobriety tests, which in turn has led to a policy of arresting suspects “without any demonstrable evidence in D.U.I. cases, and then reporting to the press that they have probable cause to arrest for testing.”⁵ (Pl.’s Resp. to City’s Mot. for S.J.). While plaintiff appears to have merged the “affirmative policy” and “failure to train” inquiries for municipal liability under section 1983, claiming the City “as a matter of custom, matter and practice, has intentionally and deliberately failed to adequately train” its’ employees, I need not attempt to distinguish between the two as his claim cannot proceed on either basis.

Plaintiff’s claim revolves around a perceived connection between field sobriety tests and the establishment of probable cause to arrest suspects in D.U.I. cases. He states: “[i]t is clear that the police did not have probable cause to . . . arrest [McMillian]. It is even more clear that the policy of not doing sobriety tests directly affects the effort of Police to gather information which would have stopped this wrongful arrest.” (Pl.’s Resp. to City’s Mot. for S. J.) What is absent from any of the material submitted by plaintiff is any explanation as to why an arrest for

⁵ Plaintiff relies exclusively on the affidavit of Michael Perrone, a Philadelphia Police Officer from 1968 to 1993, who states in his affidavit that he is an “expert in Philadelphia Police policy and procedure” who has remained “in close contact with current Philadelphia Officers and the way that DUI arrests and investigations are made.”

D.U.I. without a field sobriety test amounts to a deprivation of a suspect's constitutional rights. The answer cannot be because McMillian was not in fact intoxicated in this particular instance and a field sobriety test would have spared him from arrest. Police officers are not required to make arrests only when they are absolutely sure that a suspect is guilty. Whether police officers had probable cause to arrest depends on whether at the time of the arrest, "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that [a suspect] had committed or was committing an offense." Beck v. Ohio, 379 U.S. 89, 91 (1964). "Probable cause to arrest requires more than mere suspicion; however, it does not require that the officer have evidence sufficient to prove guilt beyond a reasonable doubt." Orsatti v. New Jersey State Police, 71 F.3d 480, 482-83 (3d Cir.1995). Rather the facts must support a reasonable belief that "there is a 'fair probability' that the person committed the crime at issue." Wilson v. Russo, 212 F.3d 781, 789 (3d Cir. 2000).

Plaintiff's claim cannot survive unless he can make some showing that probable cause cannot exist in D.U.I. cases without field sobriety tests, and therefore any "policy" against, or failure to train on their administration amounts to a violation of the constitutional rights of suspects arrested in the absence of such tests. Plaintiff makes no such showing, instead concentrating on demonstrating that in this particular case the police did not have probable cause to arrest McMillian and a field sobriety test would have detected his innocence. Even if that were true, it is not evidence of a municipal policy or custom and therefore does not help overcome the City's motion for summary judgment. The only evidence of a municipal policy or custom introduced by plaintiff is the affidavit of Michael Perrone. Leaving aside the fact that

Perrone retired from the police force in February, 1993 and the incident at issue in this case occurred in March 1998, at most his affidavit establishes only that Philadelphia police officers are not trained in the use of, and do not generally administer, field sobriety tests. What plaintiff must show, however, is why such tests must be administered in order for a police officer to have probable cause to arrest a suspect for D.U.I. Surely there are facts and circumstances that may exist in the absence of a field sobriety test sufficient to warrant an officer believing that a suspect is intoxicated. For example, slurred speech, loss of balance, scent of marijuana, blood shot eyes or erratic behavior consistent with someone whose mind is being effected by drugs or alcohol. Whether or not holding thirty children against their will on a moving bus for over an hour might lead a reasonably prudent officer to believe that McMillian was intoxicated, the absence of a field sobriety test does not automatically render his arrest one without probable cause. The City's motion for summary judgment will therefore be granted.

II. The Fair Report Privilege

The PNI defendants also move for summary judgment on McMillian's remaining defamation claim against them for their characterization of this incident as a "drug-crazed. . . ride." Pennsylvania law recognizes the privilege laid out in section 611 of the Restatement of Torts allowing the press to publish accounts of official proceedings or reports even when they contain defamatory statements. See Williams v. WCAU-TV, 555 F. Supp. 198, 201 (E.D. Pa. 1983); Restatement (Second) of Torts, § 611. Section 611 provides: "The publication of defamatory matter concerning another in a report of an official action or proceeding. . . is privileged if the report is accurate and complete or a fair abridgement of the occurrence of the

report.” Comment “(h)” further states: “An arrest by an officer is an official action, and a report of the fact of the arrest or of the charge of crime made by the officer in making or returning the arrest is therefore within the conditioned privilege covered by this Section. . . .” The privilege described in section 611 offers only qualified immunity however, and it “is forfeited if the publisher steps out of the scope of the privilege or abuses the ‘occasion.’ Furthermore this qualified privilege is lost if the defamatory material is published solely for the purposes of causing harm to the person defamed.” Williams, 555 F. Supp. at 202 (internal quotations and citations omitted). It is not essential that the governmental proceedings or the official report be set forth verbatim by the newspaper. A summary of substantial accuracy is all that is required. See Sciandra v. Lynett, 409 Pa. 595 (1963). A statement is substantially accurate if its “gist” or “sting” is true, that is, if it produces the same effect on the mind of the recipient which the precise truth would have produced. See Williams, 555 F. Supp. at 201.

The issue before me is not whether “drug-crazed. . .ride” is capable of defamatory meaning, but whether it captures the “gist” of the report of McMillian’s arrest and charge with substantial accuracy. Corporal James Pauley of the Philadelphia Police Department Public Affairs Office stated in an affidavit dated September 21, 2000, that he made statements to the media about the March 10, 1998 incident involving McMillian. Pauley asserts that he learned from police investigators and supervisors handling McMillian’s case that he had been charged with D.U.I. because of his failure to allow the children off the bus. These investigators told Pauley that they believed McMillian was under the influence of narcotics because they could detect no odor of alcohol when he was finally apprehended. Based on this information Pauley asserts that he made the following statement to the press on behalf of the Philadelphia Police

Department: “In this situation, police believed it was more than alcohol. So we had probable cause to do a blood test. We believe he was under the influence of narcotics because of his actions.” Plaintiff spends much of his brief discussing the injustice of what happened to him, the lack of probable cause to arrest, and the improper involvement of the school district, none of which is relevant to whether the PNI defendants accurately reported the “gist” of the statement issued by the police. However, plaintiff does contend that the statement made by Pauley in his affidavit is contradicted by a March 1998 article in the Philadelphia Inquirer in which Pauley is quoted as saying McMillian “was observed to be possibly under the influence of something.” Plaintiff argues that the characterization of the incident as a “drug-crazed. . .ride” should be compared to the quote attributed to Pauley in 1998, rather than the one he gave in his affidavit September 21, 2000, but that in any event neither captures the “gist” or “sting” of either statement. I disagree.

The press heard a description of McMillian’s highly unusual behavior and were told that he had been charged with D.U.I. In addition, construing the facts in plaintiff’s favor, the PNI defendants heard an official police statement that McMillian was observed to “possibly be under the influence of something.” Based on this information they characterized the event as a “drug-crazed. . . ride.” The media is permitted to use vivid or colorful language when describing events. See Binder v. Triangle Publications, Inc., 275 A.2d 53, 58 (Pa. 1971)(where a newspaper used the term “bizarre love triangle” the court stated, “[a]n action for defamation cannot be premised solely on [the] defendant’s style or utilization of vivid words in reporting on official proceedings.”); Sellers v. Time, Inc., 299 F. Supp. 582, 585 (E.D.Pa.1969)(“We disagree with the plaintiff’s contention that the article loses its privilege by reason of the alleged ‘flippan’

and ‘smart alecky’ style of writing which was utilized by Time to create reader interest.”) The term “crazy” is commonly understood to mean, among other things, erratic, out of the ordinary, odd, or unusual. See Webster’s Third New International Dictionary 531 (1966). I find that the uncontested accounts of McMillian’s behavior fall within this definition. The only matter left for me to resolve is whether attributing this “crazed” behavior to the influence of drugs is a substantially accurate characterization of the “gist” of the statement issued by the police. Given the statement by Pauley that McMillian was suspected of being under the influence of “something,” his unusual behavior, and his arrest for D.U.I., the “gist” or “gist” of the report --that McMillian engaged in aberrant behavior induced by drugs--is fairly captured by the term “drug-crazed.” In light of the media’s right to use colorful or vivid language, I find that the use of this term is protected by Pennsylvania’s fair report privilege.

Even if the the PNI defendants were not entitled to protection under the privilege, the First Amendment prohibits recovery in defamation claims against media defendants absent a showing of fault. Gertz v. Robert Welch Inc., 418 U.S. 323, 347 (1974). Where the allegedly defamatory statements concern a private actor, such as McMillian, the burden of proof is on the plaintiff to establish an abuse of the privilege as “want of reasonable care and diligence to ascertain the truth” or more simply put, negligence. Rutt v. Bethlehems' Globe Publishing Co., 484 A.2d 72, 83 (Pa. Super. Ct. 1984). At McMillian’s preliminary hearing plaintiff’s own counsel stated: “The police had the audacity to tell the press that he was high on crack cocaine.” “[They] ran the story that night, Mr. McMillian was high on cocaine. They all ran it and who gave it to them [?] The D.A. and the police.” Plaintiff asserts without citation that these statements are “not and can not be evidence.” I agree that they are not evidence that McMillian

was in fact under the influence of drugs during the incident in question; however, they are evidence of the reasonableness of the PNI defendants' characterization of that incident as "drug-crazed." They are evidence that the "gist" of the statement issued by police, even as characterized by plaintiff's own counsel, was that McMillian's erratic behavior was caused by the influence of drugs. As no reasonable juror could find that the phrase "drug-crazed. . .ride" was not a substantially accurate characterization of the "gist" of the statement issued by police, summary judgment will be entered in favor of the PNI defendants.

III. Claims Against the School District

The School District moves for summary judgment on the ground that plaintiff has failed to state a claim against it. The School District is not specifically named in any of the headings preceding each of the five counts listed in plaintiff's amended complaint. Counts one and two are listed below the heading "Cedric McMillian vs. All Defendants", while counts three, four, and five are listed below the heading "Cedric McMillian vs. City of Philadelphia." Since count two has already been dismissed, the only claim that would seem to remain against the School District is count one, alleging malicious defamation. Plaintiff disagrees, claiming that since the School District is named in the numbered points below the heading in Count three, suing the City of Philadelphia under § 1983, he has also stated a claim against the School District for violation of that statute. Given that the plaintiff has amended his complaint once already and has clearly labeled each count in the amended complaint with a heading in boldfaced capital letters differentiating who is being sued under each claim, plaintiff's interpretation requires a somewhat strained reading of his complaint. Reading the plain language of Count three it is clear that

McMillian is attempting to hold the City responsible for the actions of School District employees and this count is in not in fact a claim against the School District.⁶

Even were I to find that plaintiff's amended complaint asserts a violation of § 1983 by the School District, it cannot survive the District's motion for summary judgment. Plaintiff states, "[t]he School District is responsible for the language of its supervisor who without any training, without any testing, and without any rational reason chose to direct that [p]laintiff be arrested for D.U.I.," and that "but for the failure to supply the matron none of this would have happened. (Pl.'s Resp. to Def. Sch. Dist. Mot. for S. J.) However, it is well established that respondeat superior liability may not be asserted against a public entity under § 1983. See, e.g., Board of Comm'rs of Bryan Cty. v. Brown, 520 U.S. 397, 403 (1997). Like the City, the School District may not be held liable unless "the alleged unconstitutional action executes or implements policy or a decision officially adopted or promulgated by those whose acts may fairly be said to represent official policy." Reitz v. County of Bucks, 125 F.3d 139, 144 (3d Cir.1997), citing Monell v. New York Dep't of Soc. Serv., 436 U.S. 658, 690-91 (1978). As stated above, in the absence of an affirmative policy or custom, a failure to train employees can serve as the basis of section 1983 liability "where the failure to train amounts to deliberate indifference to the rights of persons with whom the municipal employees come into contact." Reitz, 125 F.3d at 145 (quoting Canton v. Harris, 489 U.S. 378, 388 (1989) (internal citations, punctuation omitted). Even if plaintiff has stated a claim under section 1983, and I hold that he has not, plaintiff has made no showing of either an established custom or policy leading to constitutional violations or

⁶ "Defendant City. . .has. . .failed to train. . .School District employees concerning D.U.I. . . ." (Pl. Am. Comp. at ¶ 82)

a failure to train its employees amounting to a deliberate indifference to constitutional rights on the part of the School District. The District's motion for summary judgment will therefore be granted as to any § 1983 claims that may have been asserted by plaintiff in Count three.

With respect to plaintiff's "malicious defamation" claim, the School District contends that under the Tort Claims Act, 42 Pa.C.S.A. §§ 8541 et seq., it is entitled to immunity. The Act provides absolute immunity to local agencies from tort liability, except in eight enumerated cases.⁷ In my Order dated, August 3, 1999, I stated:

'Negligent acts' for which a local agency may be held responsible do not include acts by an employee that constitute a 'crime, actual fraud, actual malice, or willful misconduct'; only the offending employees themselves may be held liable for such conduct. See §§ 8542(a)(2); 8550. [] [P]laintiff's. . .claim[] he asserts for "Malicious Defamation". . . sound[s] in willful or at least knowing misconduct. The City is clearly immunized from liability for damages for any such claims under § 8451.

Plaintiff offers no argument as to why a School District, also a local agency, is not similarly immunized from this claim. Accordingly the School District's motion for summary judgment with respect to Count one, alleging "malicious defamation," will be granted.

Most of plaintiff's response to the School District's motion for summary judgment is devoted to his contention that his claims fall within three of the exceptions to the Tort Claims Act, namely (1) liability for the operation of a motor vehicle in the local agency's possession or control; (2) care and custody of the personal property of others in the possession or control of the

⁷ A local agency will be liable for an injury caused by it or its employees only if (1) the injurious conduct would have given rise to liability under common or statutory law but for governmental immunity and (2) the injury was caused by the negligent acts of the local agency or of an employee acting within the scope of his or her office or duties with respect to certain categories. These categories are: (1) vehicle liability; (2) care, custody, control of personal property; (3) real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care, custody or control of animals. 42 Pa.C.S.A. § 8542.

local agency; and (3) liability for the care, custody or control of animals in the possession or control of the local agency. 42 Pa. C.S.A. § 8542 (1),(2),(8). These claims may be brought however, only if they are based on a common law tort plaintiff could have raised but for governmental immunity. See id. None of the five substantive counts raised in plaintiff's amended complaint allege torts falling under any of the exceptions upon which he relies. Counts one and five assert state law intentional torts as to which, as determined above, the District is immune from liability under section 8541. Count two was dismissed by my Order dated June 1, 2000. As discussed previously, plaintiff can not establish liability under § 1983 against the District, the claim asserted in Count three. The only remaining substantive count is Count four, alleging violations of sections 1, 26, and 28 of the Pennsylvania Constitution.⁸ In my Order dated August 3, 1999, I dismissed plaintiff's claims against the City under the Pennsylvania Constitution, finding that I did not need to address the difficult question of whether violations of the state constitution may support private damage actions in Pennsylvania and/or whether a state constitutional claim could be barred by the Tort Claims Act, as it was clear that McMillian failed

⁸ These sections provide:

- § 1. Inherent rights of mankind: All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.
- § 26. No Discrimination by Commonwealth and its political subdivisions: Neither the Commonwealth nor any political subdivisions thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.
- §28. Prohibition against denial or abridgment of equality rights because of sex: Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

to state a claim for a violation of his rights under the provisions alleged. See Order dated August 3, 1999, at 7-9.⁹ Similarly, plaintiff has similarly failed to state a claim against the School District under the state constitution and there are therefore no counts in his complaint that might support claims against the School District under the exceptions to the Tort Claims Act.

Even if plaintiff's amended complaint could be interpreted to accommodate these claims, the allegations raised in the amended complaint do not fall within any of the three exceptions relied on by the plaintiff. Exceptions to the general rule of immunity must be narrowly interpreted given the expressed legislative intent to insulate political subdivisions from tort liability. See Mascaro v. Youth Study Center, 523 A.2d 1118, 1123 (Pa. 1987). With respect to the exception for "the operation of any motor vehicle in possession or control of the local agency," plaintiff suggests that the School District may be held liable for negligently failing to provide a bus matron for his route on March 10, 1998. § 8542(b)(1). Failure to provide a matron, however, does not constitute the "operation of a vehicle" for purposes of this exception. See City of Philadelphia v. Love, 509 A.2d 1388,1390 (Pa. Commw. Ct.1986)("We hold that the acts of entering into or getting out of a motor vehicle, for purposes of the Political Subdivision Tort Claims Act, do not constitute the operation of that vehicle.") The second exception relied on by plaintiff is for the "care, custody or control of personal property." This exception states, "[t]he only losses for which damages shall be recoverable under this paragraph are those property losses suffered with respect to the personal property in the possession of the

⁹ I found it unlikely that Article I, section one, the inherent rights of mankind, could be held to support a private right of money damage against a government entity; and that there were simply no allegations in plaintiff's amended complaint to support a claim of discrimination under either sections 26 or 28 (prohibiting discrimination by the Commonwealth and its political subdivisions and discrimination on the basis of sex, respectively).

local agency.” § 8542(b)(2). McMillian makes no allegation of any loss of personal property and may therefore not make use of this exception. The last exception relied on by plaintiff is for the “care custody or control of animals in the possession or control of a local agency.” § 8542(b)(8). Plaintiff asserts without citation, “children, like animals are not responsible as a matter of law for their actions. [] Because children are not responsible for their actions, the failure to properly supervise them in a motor vehicle blends the vehicle exception with the care, custody or control of animals.” (Pl.’s Resp. to Def. Sch. Dist. Mot. for S. J.). Given the legislative mandate to construe the exceptions to section 8541 narrowly, as well as my own determination that a failure to supervise children does not fall within the definition of “operation of a motor vehicle,” I decline to recognize a new exception to the Tort Claims Act covering the transportation of children.

For all the foregoing reasons, the School District’s motion for summary judgment will be granted.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CEDRIC McMILLIAN

v.

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:
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:
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CIVIL ACTION

PHILADELPHIA NEWSPAPERS, INC., :
et al.

NO. 99-2949

ORDER

AND NOW, this day of March, 2001, in consideration of defendants' motions for summary judgment, plaintiff's responses thereto, and for the reasons set forth in the accompanying memorandum, it is ORDERED that:

1. Defendants Philadelphia Newspapers, Inc., Mann Frisby, Gloria Campisi, and April Adamson's motion for summary judgment is GRANTED.
2. Defendant City of Philadelphia's motion for summary judgment is GRANTED.
3. Defendant School District of Philadelphia's motion for summary judgment is GRANTED.
4. Judgment is entered in favor of defendants Philadelphia Newspapers, Inc., Mann Frisby, Gloria Campisi, April Adamson, the City of Philadelphia, and the School District of Philadelphia and against plaintiff Cedric McMillian.

THOMAS N. O'NEILL, JR., J.