RENDERED: January 10, 1997; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 95-CA-0276-MR

MONTE ROSS KELLY; STANLEY KELLY INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF WANDA KELLY — APPELLANTS

V.

APPEAL FROM MERCER CIRCUIT COURT
HONORABLE STEPHEN M. SHEWMAKER, JUDGE
ACTION NO. 93-CI-90

JAMES GASH, TONY SHIRLEY, KENNETH KING, ROBERT A. CHRISTIANSON, KENNETH W. MEREDITH, J. HUGH PHILLIPS, GLENDA R. SHORT and CLYDE SIMS, JR. — APPELLEES

OPINION
AFFIRMING

* * * * * * * *

BEFORE: GARDNER, JOHNSON and MILLER, Judges.

GARDNER, JUDGE: Appellants, Monte Kelly (Monte) and Stanley Kelly (Stanley), appeal from a judgment of the Mercer Circuit Court in this negligence action. We have reviewed appellant's issues and the record below, but have uncovered no error.

This action stemmed from an injury Monte received on April 18, 1991. Monte was a junior at Mercer County High School.

He was enrolled in an Agricultural Structures and Design class at the high school taught by Tony Shirley (Shirley). As a class assignment, Monte was part of a group which was building a cattle feeder made of oak. Monte was hammering a nail into the feeder when a nail rebounded and pierced his left eye. Monte was not wearing eye protection at the time of the injury. The injury required surgery, and Monte ultimately was rendered legally blind in his left eye. He is able to wear a lens in his left eye which corrects his sight somewhat.

On April 12, 1993, Monte and his parents, Stanley and Wanda, filed a complaint against Shirley; James Gash (Gash), the school's principal; John Gumm (Gumm), the assistant principal; Kenneth King (King), the Mercer County School Superintendent and the members of the Mercer County School Board both individually and in their capacities as members of the board.[1] The plaintiffs contended that Shirley failed to provide proper instruction or supervision, failed to require that Monte wear eye protection and failed to prevent Monte from completing his class assignment until he made appropriate requests for adequate eye protection from school officials. They contended that Gumm, Gash and King had all failed to properly supervise Shirley and failed to insure that the students wore eye protection or that such protection was available. They asserted that the school board members failed to adopt regulations requiring the use of appropriate eyewear, failed to

[1]Wanda Kelly is now deceased, and on appeal Stanley is appealing both as an individual and as executor of Wanda's estate.

provide appropriate eyewear and failed to properly supervise King. Monte sought recovery for past and future medical expenses, past and future pain and suffering and loss of wages and permanent impairment to his power to earn money. Stanley and Wanda sought recovery of medical expenses they incurred on behalf of Monte while he was a minor.

The case proceeded and prior to voir dire, the circuit court ruled on the defendants' motion for summary judgment and dismissed all defendants except for Shirley. The court also dismissed Stanley and Wanda as plaintiffs. A trial by jury was held on September 12 - 14, 1994. The jury returned a verdict for Shirley. On September 21, 1994, a judgment was entered in keeping with the jury's verdict. Monte moved, pursuant to Kentucky Rules of Civil Procedure (CR) 50.02, 59.01 and 59.05, for a judgment notwithstanding the verdict (JNOV), a new trial and to vacate the judgment. In an order of January 11, 1995, the circuit court denied these motions. This appeal followed.

Appellants first argue that the circuit court erred by declining to give the instruction of extraordinary care which they maintain Shirley should have exercised toward Monte and the other students. We have reviewed the facts of this case and the cited authorities and have reached the conclusion an instruction on extraordinary care would not have been proper.

Generally, a public officer is not personally liable unless he or she acted negligently, that is, failed to meet the standard of the ordinarily prudent person. Spillman v. Beauchamp,

Ky., 362 S.W.2d 33, 36 (1962). See also Whitt v. Reed, Ky., 239 S.W.2d 489 (1951). Teachers of local school districts are not expected to be insurers of the safety of students while they are at school. Gathright v. Lincoln Ins. Co., 688 S.W.2d 931 (Ark. 1985); Roberts v. Robertson County Board of Education, 692 S.W.2d 863, 870 (Tenn. App. 1985). Teachers must exercise such care as ordinarily reasonable and prudent persons would exercise under the same or similar circumstances. Id.

In the instant case, appellants have failed to cite authority which would require an instruction on extraordinary care. The facts in Wesley v. Page, Ky., 514 S.W.2d 697 (1974); Mann v. Kentucky and Indiana Terminal Railroad Company, Ky., 290 S.W.2d 820 (1955), and other cited cases are distinguishable from the case at bar. The Supreme Court of New York, Appellate Division, considered similar facts in Cherry v. State, 344 N.Y.S.2d 545 (N.Y. App. Div. 1973), and reversed a finding of negligence, stating that it is hard to imagine a more common place activity less fraught with danger than hammering nails. Id., at 546. Further, the jury instruction proposed by appellants in the case at bar clearly went beyond the "bare bones" approach espoused in Wemyss v. Coleman, Ky., 729 S.W.2d 174 (1987); Cox v. Cooper, Ky., 510 S.W.2d 530 (1974), and other Kentucky cases. We have found no error regarding this issue.

Appellants next contend that the circuit court abused its discretion by allegedly threatening an expert witness for the plaintiffs with the cost of a mistrial. They maintain that the

witness was only responding to open ended questions asked by defense counsel. They believe a new trial was required pursuant to CR 59.01 as a result of the trial court's actions. We have reviewed the record and have found no reversible error.

The authorities cited by appellants are distinguishable from the instant case. A trial court clearly has discretion in conducting judicial proceedings and the affairs of the courtroom. See Trimble County Fiscal Court v. Trimble County Board of Health, Ky. App., 587 S.W.2d 276, 278-79 (1979). We have uncovered no abuse of discretion here. The witness was testifying outside of his field and outside of the prior medical evidence presented. The trial court first asked plaintiff's counsel to discuss the matter with the witness and to admonish the witness to stay within his field. After the witness continued to testify about matters outside his field and matters that had not previously been presented into evidence, the court admonished the witness in chambers to discontinue this testimony or the court would consider declaring a mistrial at the witness' cost. While the court's admonishment may have been harsh, it was conducted away from the jury and it was justified. Appellants have shown no prejudice of any kind.

Appellants thirdly argue that Shirley was negligent per se because he allegedly violated Mercer County School Board policies, and he violated Kentucky regulations adopting federal

Occupational, Safety and Health Administration (OSHA) requirements. Appellants' argument lacks merit.

Once again, appellants have cited to no authority which compels the result they seek. The school board policies cited are very general and do not address the specific situation in which Monte was injured. Therefore, they did not thrust an additional duty upon Shirley. See Louisville Trust Co. v. Nutting, Ky., 437 S.W.2d 484, 486 (1968). Cf. Wemyss v. Coleman, 729 S.W.2d at 180. The Kentucky regulations and OSHA requirements do mention eye protection, but they do not cover the specific situation that existed in this case. There was not a clear violation of a statute or regulation as existed in Home Ins. Co. v. Hamilton, 253 F.Supp. 752, 755 (E. D. Ky. 1966). Thus, appellants' argument fails.

Next, appellants contend that the circuit court improperly dismissed the individual school board members, King and Gash as defendants in this case. We disagree.

In general, it has been held that statutes do not contemplate that members of bodies such as fiscal courts or boards shall be at a place where work is being done nor do they contemplate that board members shall personally superintend the manner in which work is being done. Moores v. Fayette County, Ky., 418 S.W.2d 412, 414 (1967). Public officers are responsible only for their own misfeasance and negligence and are not responsible for the negligence of those who are employed by them if they have employed persons of suitable skill. Id. Officials have no vicarious liability for acts of subordinates in which they are not

directly involved. Board of Trustees of the University of Kentucky v. Hayse, Ky., 782 S.W.2d 609, 615 (1989). The official immunity doctrine protects decision making by a public official only if his acts are not otherwise wrongful. Id. A school system is not required to provide personnel to supervise every portion of the school buildings and campus area. Gathright v. Lincoln Ins. Co., 688 S.W.2d at 933. Schools are not intended to be insurers of the safety of their pupils. Id. A principal of a school has the duty to supervise the school grounds and upon failure to do so could be held liable. Cox v. Barnes, Ky., 469 S.W.2d 61, 63 (1971). A principal's duties are manifold, and he or she cannot be at all places at all times. Id. He or she is not responsible for the failure of the staff to fulfill all of their duties. Id.

Appellants failed to state a claim under which Gash, King or the school board members could be held liable. There was no showing that the school board members were lax in their duties, failed to hire the correct people or were even notified regarding an alleged lack of eye protection devices. The allegation that the board members should have regularly visited the classroom reveals a misunderstanding of a board's role. Further, there was no showing that Gash or King breached their duties by failing to properly supervise and that any alleged breach would have been a proximate cause in the injury that transpired in the instant case. It would clearly be unreasonable to expect Superintendent King to know the exact details of every classroom. Once again, educators cannot be required to be the insurers of the students' safety.

Appellants also argue that Stanley's and Wanda's cause of action is not bared by the statute of limitations. They maintain that their action was actually based upon an implied contract so that five years was the proper time period in which to bring this case. This argument completely lacks merit. A review of the complaint and the entire record shows that the action was based in negligence rather than in contract, thus rendering the one year period of Kentucky Revised Statutes (KRS) 413.120(1) applicable rather than the five year period of KRS 413.140. The authorities cited by appellants are distinguishable. In addition, we have been unable to find where this implied contract theory was presented to the court below.

Finally, appellants contend that Monte should be allowed to recover for the medical expenses he incurred prior to reaching majority if his parents' claim is dismissed. Again, appellants cite no authority which supports their position. Further, appellants argument is rendered largely academic as we are affirming the judgment of the trial court.

For the foregoing reasons, the judgment of the Mercer Circuit Court is affirmed.

MILLER, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANTS:

Tom H. Pierce
Versailles, Kentucky

BRIEF FOR APPELLEES:

Robert L. Chenoweth
J. Gary Bale
Frankfort, Kentucky