

RENDERED: October 25, 1996; 2:00 p.m.  
NOT TO BE PUBLISHED

NO. 95-CA-00968-MR

VIVIAN JANET BOWMAN

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE WILLIAM S. COOPER, JUDGE  
ACTION NO. 95-CI-0025

HARDIN COUNTY;  
SHERIFF THOMAS;  
JAILER LEWIS LAWSON; and  
PUBLIC DEFENDER QUINN PEARL, JR.

APPELLEES

**OPINION**  
**AFFIRMING**

\* \* \* \* \*

BEFORE: GARDNER, JOHNSON and MILLER, Judges.

JOHNSON, JUDGE: Vivian Janet Bowman (Bowman) appeals pro se from an order entered by the Hardin Circuit Court on March 23, 1995, granting summary judgment in favor of appellees, Sheriff Thomas, Jailer Louis Lawson, District Judge Janet Coleman, and Public Defender Quinn Pearl, Jr. The Radcliff City Police and Lt. Steve Bailey were originally designated as appellees but have been dismissed by a prior order of this Court. We affirm.

On April 5, 1993, Bowman was arrested at her mother's home for carrying a concealed deadly weapon. On April 8, 1993, Bowman's mother and nephew sought and received an emergency protective order against Bowman, and on April 9, 1993, Bowman's

mother swore out a warrant for Bowman's arrest on charges of criminal trespass arising from the April 5 incident. Bowman was released from jail on April 12, 1993.

On November 3, 1994, police were called to the offices of the Cabinet for Human Resources (CHR) in Elizabethtown because Bowman was allegedly threatening to pull a knife on CHR employees and threatening to injure herself. At that time, Bowman was arrested on the outstanding warrant for criminal trespass.

Following her arrest on November 3, Bowman was taken to the Hardin County jail. At that time, Sergeant Larry Bingham (Sgt. Bingham) filled out a verified petition for involuntary hospitalization seeking to have Bowman hospitalized due to mental illness. In the petition, Sgt. Bingham alleged that Bowman was mentally ill, was a danger to herself and others, and that Bowman had threatened to pull a knife on individuals at the CHR office. Bowman was held at the jail for several hours, and then transferred to the Hardin Memorial Hospital due to her mental condition. The involuntary hospitalization warrant was served on Bowman the same day.

An examination order for a 72-hour hospitalization was also entered on November 3 authorizing transfer of Bowman to Central State Hospital for evaluation. Following the evaluation, the examining psychologist found that Bowman was mentally ill, a danger to herself and others, and recommended hospitalization to stabilize medications and reduce delusional beliefs. An order granting a 72-hour hospitalization was entered and Bowman was transferred to Central State Hospital. Bowman was discharged from Central State Hospital on November 9, 1994.

Bowman appeared before Hardin District Judge Janet Coleman on the criminal trespass charge on November 10, 1994. In her notes, Judge Coleman indicated that Bowman appeared to be "unwell". Judge Coleman continued the matter until November 14 in order to have Bowman examined by a doctor, and ordered that Bowman be held in jail on a \$6,000 cash bond because Bowman had failed to appear for a jury trial on the concealed deadly weapon charge. Bowman was placed in a holding cell where she proceeded to howl like a wolf until she was transferred to the Hardin County jail. Bowman appeared before Judge Coleman again on November 15 and pled guilty to the charges of criminal trespass and carrying a concealed deadly weapon.

Bowman filed her complaint against the appellees on January 20, 1995. In her complaint, she alleged "arrest with no probable cause, false accusations, slander, that the defendants represent an unconstitutional legal system, and that the defendants are communist." Specifically, Bowman alleged that:

1. She was falsely arrested at the CHR offices on November 3, 1994;
2. "Mr. Jackie Hall who works in jail" slandered her;
3. Sergeant Bingham signed false accusations against her in the petition for involuntary hospitalization;
4. Quinn Pearl told her that the criminal trespass and concealed deadly weapons charges had been dropped;
5. Lieutenant Bailey falsely arrested her on April 5, 1993, for carrying a concealed deadly weapon;
6. When she appeared before Judge Coleman on November 10, 1994, Judge Coleman was "rude and disrespectful"; and

7. On November 15, 1994, she was forced to plead guilty against her will to the charges of criminal trespass and carrying a concealed deadly weapon.

The appellees filed various motions for summary judgment and judgment on the pleadings. The trial court entered its order on March 23, 1995, granting judgment in favor of the appellees and dismissing Bowman's complaint. This appeal followed. We will address Bowman's claims of false arrest and slander and her alleged cause of action under the Americans with Disabilities Act separately.

### **I. FALSE ARREST**

As to Bowman's cause of action for false arrest stemming from the April 5, 1993, arrest, Kentucky Revised Statutes (KRS) 413.140 provides a one-year statute of limitations for wrongful arrest actions. As Bowman's complaint was filed on January 4, 1995, any cause of action Bowman may have had for the April 3, 1993 arrest is barred by the statute of limitations. Appellees also argue that even if Bowman's action was not time barred, her subsequent guilty plea to the charge of carrying a concealed deadly weapon is conclusive of the question as to whether there was probable cause for her arrest and would preclude an action for false arrest. Louisville Railway Company v. Hutti, Ky., 141 Ky. 511, 512, 133 S.W. 200 (1911). Since Bowman alleges her guilty plea was coerced, we do not rely on the guilty plea in affirming the dismissal of her complaint.

Bowman's claim for false arrest stemming from the November 3, 1994 arrest must also fail. As previously stated, Bowman was arrested on that date on the outstanding warrant for

criminal trespass. As the arresting officer was executing an arrest warrant duly ordered by the court and valid on its face, he had proper authority to arrest Bowman, and no action for false arrest will lie. Duncan v. Brothers, Ky., 344 S.W.2d 398, 400-401 (1961).

## **II. SLANDER**

In her brief, Bowman alleges that she was slandered when Deputy Sheriff Vance (Deputy Vance) told someone to "take a MIW out on [her]" and that she was libeled by Sgt. Bingham in the petition for involuntary hospitalization. We agree with the trial court that a statement made by a police officer in the course of performing his statutory duty is absolutely privileged, even if later proven to be untrue. Catron v. Jasper, 303 Ky. 598, 198 S.W.2d 322 (1946). Because KRS 202A.041(1) requires a police officer to take appropriate action to determine if an involuntary hospitalization proceeding should be initiated if he has probable cause to believe that a person is mentally ill and dangerous to himself or others, there can be little doubt that Deputy Vance's statement was made in the performance of his duties. As to the statements contained in Sgt. Bingham's petition, statements made in judicial pleadings are absolutely privileged, even if claimed to be false and malicious. Reynolds v. Evans, 244 Ky. 267, 50 S.W.2d 549 (1932). As Sgt. Bingham was under the same statutory duty set forth in KRS 202A.041(1) as Deputy Vance, there can also be no doubt that his statements were made in the performance of his duties, so they are also privileged by the holding of the Court in Catron, supra. Finally, we also agree with the trial court that

pursuant to KRS 70.040, Sheriff Thomas cannot be held personally liable for the acts or omissions of his deputies.

Lastly, Bowman alleged in her complaint that she was slandered by a Jackie Hall who works in the jail. However, Bowman failed to set forth in her complaint the slanderous words of which she complains. Because a petition to recover damages for slander must set forth the allegedly slanderous words, Bowman's allegation that Hall "started slandering" her is insufficient to state a cause of action. Schulten v. Bavarian Brewing Company, 96 Ky. 224, 227, 28 S.W. 504 (1894).

### **III. THE AMERICANS WITH DISABILITIES ACT**

In her brief, Bowman appears to allege a cause of action under the Americans with Disabilities Act (ADA). However, as Bowman made no claim under the ADA before the trial court, we are precluded from considering it on appeal. Bibbs v. Kentucky & Indiana Terminal Railroad, Ky., 300 S.W.2d 229, 231 (1957). See also Card Creek Coal Co. v. Cline, 305 Ky. 473, 204 S.W.2d 571 (1947) (holding that appellant cannot rely on statutory cause of action not pled before trial court).

Having considered the parties' arguments on appeal, the judgment of the Hardin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Vivian Janet Bowman, Pro Se  
Lexington, KY

BRIEF FOR APPELLEES, THOMAS AND  
LAWSON:

Hon. W. Kenneth Nevitt  
Hon. R. Thaddeus Keal  
WILLIAMS & WAGONER  
Louisville, KY

Hon. Kenneth Howard  
Elizabethtown, KY