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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0964-MR

BRENT CALDWELL,
ADMINISTRATOR OF THE ESTATE
OF STEVEN LEE McSTOOTS,
DECEASED — APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE JERRY CROSBY, II, JUDGE
ACTION NO. 14-CI-00744

CLARK TAYLOR; ANNA
VALENTINE; CORRECTCARE-
INTEGRATED HEALTH, INC.;
DANNY PERRY; DONNA T. SMITH,
MD; AND JEFF GEORGE — APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** ** ** **

BEFORE: CALDWELL, A. JONES, AND McNEILL, JUDGES.

McNEILL, JUDGE: This is a negligence case arising from the death of Steven Lee McStoots ("Mr. McStoots"). Mr. McStoots suffered from mental health

conditions including psychosis and depression. In 2013, he was an inmate in the Correctional Psychiatric Treatment Unit ("CPTU") at the Kentucky State Reformatory ("KSR"). Mr. McStoots died there on January 16, 2013, after correctional staff placed him in a restraint device because of a psychotic episode.

On November 19, 2014, Dorothy Canary, Mr. McStoots' mother, filed a wrongful death action in Oldham Circuit Court alleging negligence and gross negligence.[1] After Ms. Canary's death, the present Appellant was substituted, Brent Caldwell Administrator of the Estate of Steven Lee McStoots ("the Estate").

Defendant-Appellees are CorrectCare–Integrated Health, Inc., ("CorrectCare"), Psychiatrist Donna T. Smith, M.D. ("Dr. Smith"), Warden Clark Taylor ("Warden Taylor"), Unit Administrator Danny Perry ("Perry"), Anna Valentine ("Valentine"), and Correctional Officer Jeff George ("George").[2] The

[1] Because gross negligence was not an issue on appeal, we make no determination on that matter.

[2] The Estate appears to have abandoned their claims against Valentine and George. The trial court noted this in its order indicating that the Estate did not contest summary judgment against the officers. Similarly, the Estate confines its argument on appeal to Warden Taylor, Perry, and Dr. Smith. And although the trial court expressed concern regarding application of vicarious liability to the non-state defendants, CorrectCare concedes on page five of its brief that "[a]t the time of Mr. McStoots's incarceration at KSR, Dr. Smith was employed as a licensed psychiatrist by [CorrectCare] a contract vendor providing medical staffing to KSR." They are represented by private counsel. The remaining Appellees are represented by counsel for the Kentucky Department of Corrections ("KDOC").

circuit court granted summary judgment in favor of all defendants in two separate orders.

In one order, the court determined that Warden Taylor and Perry were entitled to qualified immunity regarding their discretionary functions and that they were not negligent in the execution of their ministerial functions. In a second order, the court held that CorrectCare and Dr. Smith were not negligent. The Estate appeals to this Court as a matter of right. For the following reasons, we affirm in part, reverse in part, and remand.

STANDARD OF REVIEW

"[O]nce the material facts are resolved, whether a particular defendant is protected by official immunity is a question of law, which we review *de novo*." *Rowan Cnty. v. Sloas*, 201 S.W.3d 469, 475 (Ky. 2006), *as corrected* (Sep. 26, 2006) (citations omitted). As previously stated, two summary judgments are at issue here. A motion for summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, stipulations, 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 a judgment as a matter of law." CR[3] 56.03. "[W]e must view the evidence in the

[3] Kentucky Rules of Civil Procedure.

light most favorable to the party opposed to the motion." *Schmidt v. Leppert*, 214 S.W.3d 309, 311 (Ky. 2007) (citation omitted). However,

> when a defendant moves to dispense with a claim based on qualified official immunity, the court should not restrict its analysis to the summary judgment standard of CR 56. Because factfinding is often necessary in deciding the immunity question, a different rule applies, both for the trial court and the reviewing court on appeal. "[A]n issue of weight and credibility is presented for the factfinder, subject only to the clear error review of appellate courts under CR 52.01." *Sheehy*, 706 S.W.3d at 239 (footnote omitted). This rule, not CR 56, applies under such circumstances.
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> . . . A trial court's factual findings are not clearly erroneous if they are "supported by substantial evidence. Substantial evidence is evidence that a reasonable mind would accept as adequate to support a conclusion, or evidence that has sufficient probative value to induce conviction in the minds of reasonable men." *Graham v. Secretary of State Michael Adams*, 684 S.W.3d 663, 675 (Ky. 2023) (cleaned up).

Dickerson v. Bower, 723 S.W.3d 799, 806–07 (Ky. App. 2025), *discretionary review denied* (Dec. 10, 2025). As to any non-immunity procedural issues, we apply CR 56. We begin, however, with the matter of qualified immunity.

ANALYSIS

Qualified official immunity applies to a negligent act or omission by a public officer or employee for his or her "(1) discretionary acts or functions, *i.e.*, those involving the exercise of discretion and judgment, or personal deliberation,

decision, and judgment . . . ; (2) in good faith; and (3) within the scope of the employee's authority." *Yanero v. Davis*, 65 S.W.3d 510, 522 (Ky. 2001) (citation omitted). However, qualified immunity does not extend to the negligent performance of ministerial acts. *Id*. In *Marson v. Thomason*, the Kentucky Supreme Court observed that the distinction between ministerial and discretionary duties is difficult to discern. 438 S.W.3d 292, 296 (Ky. 2014). And because most acts are neither purely discretionary or purely ministerial, it is the "*dominant* nature of the act" that controls. *Haney v. Monsky*, 311 S.W.3d 235, 240 (Ky. 2010) (emphasis in original). In recent years, appellate courts have detailed what is required of parties and trial courts in qualified immunity cases. *Meinhart v. Louisville Metro Gov't*, 627 S.W.3d 824, 829–30 (Ky. 2021). Our analysis is now as follows:

> Therefore, following the rubric of *Yanero* and *Meinhart*, there is a two-step analysis to undertake to determine qualified official immunity. First, a court must look at the defendant and whether he is a government official acting within the scope of his duty and review the relevant statute, regulation, rule, or policy to determine if the action is ministerial or discretionary. If ministerial then that is the end of the inquiry; trial courts do not proceed to the question of whether the conduct constitutes negligence. "Whether his actions . . . amount to a tort or not depends on whether he negligently failed to perform his mandatory acts, or negligently performed them, which is a question for a jury, assuming of course there is evidence that he acted unreasonably, that is, negligently." *Marson v. Thomason*, 438 S.W.3d 292, 301 (Ky. 2014). On the other hand, "[o]nce the officer or

> employee has shown *prima facie* that the act was performed within the scope of his/her discretionary authority, the burden shifts to the plaintiff to establish by direct or circumstantial evidence that the discretionary act was not performed in good faith." *Yanero*, 65 S.W.3d at 523. These two steps must not be confused. The first has the burden upon the defendant but does not consider the actions of the defendant, *i.e.*, whether they were negligent or acting in good faith. The second step shifts the burden to the plaintiff only after the defendant has made a *prima facie* showing that his actions were discretionary and within the scope of his authority.

Sheehy v. Volentine, 706 S.W.3d 229, 237 (Ky. 2024). With this framework in mind, we now turn to the evidence at issue in the present case.

Mr. McStoots had escalating self-harm episodes in the months before his death, including repeated head-banging and injuries observed by staff and reported to Dr. Smith. He also had an extensive history of requiring restraint devices. On the day of his death, correctional officers handcuffed and shackled Mr. McStoots as he was experiencing a severe psychotic episode in his cell. While being escorted to another cell, he collapsed to his knees and was placed face-down in a prone position for administration of the five-point restraint device.[4]

[4] This device uses straps to restrain an individual's wrists ankles, and torso—accomplished here by strapping McStoots to a cell bunk. A video recording of these events was placed under seal in the record. We have reviewed it multiple times.

While applying the restraints, an officer exclaimed, "he's not breathing." Several officers immediately rebutted that he *was* breathing. Twelve minutes after McStoots was removed from his cell, Dr. Smith ordered the restraints removed and emergency medical responders were called. Resuscitation attempts were unsuccessful.

The Estate's expert witness, Richard Sobel, M.D., opined that Mr. McStoots died of asphyxiation likely caused or contributed to by the prone five-point restraint and failures to intervene. His deposition testimony is replete with critiques of Mr. McStoots' treatment during the underlying events, including that it was "incomprehensible" that Mr. McStoots was restrained in a face-down prone position in such circumstances. He specifically testified that Dr. Smith breached the applicable standard of care. We now turn to application of the law to the evidence presented.

Qualified Immunity

Discretionary Duties

The trial court determined that Corrections Policy and Procedure ("CPP") 9.1 provides for correctional staff to exercise their discretion when deciding to administer the "Level Five" / "five-point" restraint or rather, when to administer a lesser form of restraint. We agree. The two specific regulations addressed by the trial court are: CPP 9.1(II)(G)(1)(k)(1) ("Use of Level Four or

Five restraints shall not last longer than the behavior continues as observed and documented by monitoring personnel."); and CPP 9.1(II)(G)(1)(m) ("if the inmate's behavior has improved, restraint level shall be decreased according the levels outlined in (e)"). Decisions regarding restraints under these provisions of CPP 9.1 are inherently discretionary. At the very least the "*dominant* nature of the act" prescribed is discretionary. *Haney*, 311 S.W.3d at 240. Thus, the decision to employ five-point restraints, as well as duration and escalation judgments, were discretionary acts within the scope of the Appellees' employment. And the Estate has presented no argument that they acted in bad faith. Thus, Warden Taylor, Perry, and any correctional officers involved, are entitled to qualified immunity regarding decisions made pursuant to CPP 9.1(II)(G)(1)(k)(1) and CPP 9.1(II)(G)(1)(m).

Ministerial Duties

The trial court identified two CPP provisions that impose ministerial duties: 1) advanced approval (CPP 9.1(II)(G)(1)(h)); and 2) training (CPP 9.1(II)(A)(5)). The latter requires the following: "[a]dvanced approval for placement of the inmate in Level Five control restraint shall be given by the Warden or his designee *and* by medical or a mental health professional or his designee." (Emphasis added.) We reiterate the distinction between discretionary and ministerial duties as it relates to this part of our analysis:

> If ministerial then that is the end of the inquiry; trial courts do not proceed to the question of whether the conduct constitutes negligence. Whether his actions . . . amount to a tort or not depends on whether he negligently failed to perform his mandatory acts, or negligently performed them, which is a question for a jury, *assuming of course there is evidence that he acted unreasonably, that is, negligently*.

Sheehy, 706 S.W.3d at 237 (internal quotation marks omitted) (emphasis added).

In addition to this general admonition to let juries decide whether a ministerial duty has indeed been breached, etc., it is undisputed in the present case that Warden Taylor's permission was obtained. But nothing has been presented indicating that the requisite permission of a medical or a mental health professional was obtained. Accordingly, as to the specific provision CPP 9.1(II)(G)(1)(h), we reverse and remand this case to the trial court for a jury determination on breach, causation, and damages. *See* CR 52.01 and *Sheehy*, 706 S.W.3d at 237. Because the Estate has not raised any arguments regarding George or Valentine, the only parties potentially implicated here are Warden Taylor and Perry.

As to training on the use of the five-point device, the trial court found that the Estate failed to demonstrate evidence indicating potential negligence. CPP 9.1(II)(A)(5) specifically provides as follows: "[i]f physical force is potentially necessary in a staff member's position, the staff member shall be trained in the approved methods of applying physical force." The record clearly indicates that at least some of the individuals involved in the underlying events were not properly

trained. For example, the circuit court notes in its order that "[Warden] Taylor admits that the staff involved were not all trained in application of five-points restraints." After Mr. McStoots' death, the Commissioner of Corrections for the State of Kentucky initiated a Critical Incident Review Team ("CIRT") to review the incident. The CIRT concluded in part that: "[t]he inmate was being placed in 5 point restraints although no one on the cell entry team had been trained in the application of the restraints."[5] Thus, this ministerial duty to train under CPP 9.1(II)(A)(5) was breached by Appellees' own admission. Accordingly, as to the specific provision CPP 9.1(II)(A)(5), we reverse and remand this case to the trial court for a jury to determine causation and damages. *See* CR 52.01 and *Sheehy*, 706 S.W.3d at 237. Because the Estate has not raised any arguments regarding George or Valentine, the only parties potentially implicated here are Warden Taylor and Perry.

Lastly, as it relates to ministerial duties, the Estate repeatedly cites the deposition testimony of a KDOC psychologist, Dr. Julie Barber, who had treated Mr. McStoots on previous occasions and was present during the underlying events. She testified that, during a staff meeting, she advised against using the five-point

[5] The report also recommended clarification regarding the following matters: 1) whether "[a]n inmate should be placed in the prone position or face up . . ." 2) "Should there be a mat under the inmate . . ." and 3) "Should medical check the inmate prior to placement in the restraints if he is currently restrained?" Additional and very specific recommendations regarding medical treatment were provided.

restraint on Mr. McStoots and that it had not been used on an inmate for seven or eight years. She further testified that Perry "wanted to teach [Mr. McStoots] a lesson, and that he was going to five-point him." CPP 9.1(II)(G)(1)(d)(1) provides in part that "Mechanical restraints shall not be used: as a method of punishment." Because the Estate has not raised any arguments regarding George and Valentine, the only parties potentially implicated here are Warden Taylor and Perry.

And although it is unclear whether this exact provision was cited for the trial court's review, CPP 9.1 and Dr. Barber's deposition testimony were repeatedly cited and emphasized in the Estate's response to the motion for summary judgment and in its brief before this Court. Indeed, the trial court acknowledged that "Dr. Barber objected to the use of such restraints." Thus, we will consider this issue sufficiently preserved. Accordingly, as to the specific provision CPP 9.1(II)(G)(1)(d)(1), we reverse and remand this case to the trial court for a jury determination on breach, causation, and damages. *See* CR 52.01 and *Sheehy*, 706 S.W.3d at 237. Because the Estate has not raised any arguments regarding George or Valentine, the only parties potentially implicated here are Warden Taylor and Perry.

Non-Immunity Negligence

As previously stated, CorrectCare is a private entity to which immunity does not apply. Dr. Smith is also not a state employee or agent entitled

to qualified immunity. Thus, traditional negligence principles apply. "A common law negligence claim requires proof of (1) a duty owed by the defendant to the plaintiff, (2) breach of that duty, (3) injury to the plaintiff, and (4) legal causation between the defendant's breach and the plaintiff's injury." *Wright v. House of Imports, Inc.*, 381 S.W.3d 209, 213 (Ky. 2012) (citation omitted). "Typically, duty is a question of law, while breach and injury are questions of fact for the jury to decide." *Kendall v. Godbey*, 537 S.W.3d 326, 331 (Ky. App. 2017) (citation omitted).

It appears that Dr. Smith was the only physician on the scene. She clearly owed Mr. McStoots a duty. Yet, Dr. Smith and CorrectCare confine their duty argument to CPP 9.1(II)(F) and CPP 9.l(II)(J)(1). While these provisions are instructive in isolation, they lack clarity when read in concert. In any event, this is not an immunity issue. Thus, whether these internal regulations present discretionary or ministerial duties is of minimal relevance to non-state actors. Rather, they are distinct from—but not orthogonal to—the common law duty, *i.e.*, a psychiatrists' applicable standard of care in this instance. Furthermore, Dr. Smith's recitation of the competing evidence and granular arguments regarding causation only fortifies our decision.

Put simply, the evidence of record, including Dr. Sobel's testimony and report, permits a jury question on the remaining elements of negligence. We

reiterate, "[t]ypically, duty is a question of law, while breach and injury are questions of fact for the jury to decide." *Kendall*, 537 S.W.3d at 331 (citation omitted). Contrary to this admonition, however, the trial court determined that "Plaintiff has failed to connect the dots . . . ." The court elaborated as follows:

> The Court was presented with hundreds of pages of medical records, deposition testimony, expert opinions and a video depicting the events as they occurred on January 16, 2013. However, neither party presented to this Court clear, concise reasons as to why they would be entitled to a summary judgment or why it should be denied.

The court addressed additional concerns regarding proof of causation in particular. We express no opinion about how causation or any other element of the Estate's case will ultimately be presented to the fact finder. We merely observe that the Estate need not try its entire case before the court at summary judgment. In that vein—and in a light most favorable to the Estate—it is also not the purview of this Court to connect the dots. Yet, there *are* dots. As to their ultimate connection or lack thereof, we leave that for the jury.

CONCLUSION

For the foregoing reasons, we AFFIRM the Oldham Circuit Court's summary judgments in part and REVERSE in part. We REMAND for further proceedings consistent with our decision.

ALL CONCUR.

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