RENDERED: NOVEMBER 6, 2026; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2026-CA-0242-MR

DONNA HARGENS; BENJAMIN GILES; CHRIS BRADY; DIANA PORTER; DR. CHRIS KOLB; DR. LISA WILLNER; LINDA G. DUNCAN; AND STEPHANIE HORNE — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JESSICA E. GREEN, JUDGE
ACTION NO. 23-CI-000790

JOSHUA ROOF — APPELLEE

OPINION
AND ORDER DISMISSING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND ECKERLE, JUDGES.

THOMPSON, CHIEF JUDGE: Donna Hargens, Benjamin Giles, Chris Brady, Diana Porter, Dr. Chris Kolb, Dr. Lisa Willner, Linda G. Duncan, and Stephanie

Horne (Appellants) appeal from an order of the Jefferson Circuit Court denying their motion to dismiss the amended complaint of Joshua Roof (Appellee) pursuant to Kentucky Rules of Civil Procedure (CR) 12.02(f). Appellants argue that the circuit court erred in failing to conclude that they are shielded from liability by governmental and qualified official immunity. After careful review, and for the reasons stated below, we are without jurisdiction to consider this issue and dismiss Appellants' appeal.

FACTS AND PROCEDURAL HISTORY

On January 25, 2017, Appellee was a student at Stopher Elementary School in Louisville, Kentucky, which is operated by the Jefferson County Board of Education (JCBE).[1] On that day, Appellee was riding a school bus operated by the JCBE and driven by JCBE employee Paula Melhorn (Ms. Melhorn). Appellee would later allege that, while he was a passenger on the bus, it struck a curb causing him to be thrown from his seat. Appellee later alleged that his head struck the rear emergency door with enough force to break the door's tempered glass window, resulting in Appellee suffering a permanent brain injury.

On February 6, 2023, Appellee's mother, April Roof (Ms. Roof), filed the instant action in Jefferson Circuit Court on behalf of Appellee against the JCBE

[1] Jefferson County Board of Education d/b/a Jefferson County Public Schools (JCPS).

and Ms. Melhorn.[2] The complaint set out claims of negligence and vicarious liability, as well as claims related to JCBE's alleged negligent hiring and supervision.

It was determined through discovery that the day before the accident, former JCPS Transportation Manager of Operation Tonya Crenshaw composed a letter to Ms. Melhorn stating that Ms. Melhorn's twelve prior accidents were a concern which could result in disciplinary action or termination. Subsequent discovery revealed that the JCPS evaluated Ms. Melhorn as an incompetent and substandard driver.

On August 14, 2025, Appellee filed an amended complaint against Appellants in both their official and individual capacities. The amended complaint alleged that Appellants negligently performed their ministerial duties, and alleged Appellants acted with gross negligence, recklessness, flagrant indifference, and/or willful conduct warranting punitive damages.

The following month, and in lieu of an answer, Appellants filed a CR 12.02(f) motion to dismiss the amended complaint for failure to state a claim upon which relief can be granted. In support of the motion, Appellants tendered a supportive memorandum in which they argued that the claims asserted against

[2] At the time of filing, Appellee was a minor. When he reached the age of majority, he was substituted as plaintiff.

them arise exclusively from discretionary governmental functions which insulated them from all liability for the claims made against them in their official capacities. In addition, they maintained that they were entitled to qualified official immunity which shielded them from liability on the individual capacity claims.

Appellee responded by arguing that he should be permitted limited discovery as to the scope of Appellants' job duties, responsibilities, and/or scope of authority; whether those duties constitute discretionary or ministerial functions; whether Appellants performed their discretionary duties in good faith; and, whether Appellants negligently performed any ministerial acts. The focus of Appellee's response was that Appellants' motion to dismiss was premature because salient facts on the underlying issues affecting immunity were yet to be discovered.

On February 20, 2026, the Jefferson Circuit Court entered an order summarily denying Appellants' CR 12.02(f) motion to dismiss. The order did not reveal the court's basis for the denial, nor did it address governmental or qualified official immunity. This appeal followed.[3]

[3] An order denying a claim of immunity is immediately appealable even in the absence of a final judgment. *See Breathitt Cnty. Bd. of Educ. v. Prater*, 292 S.W.3d 883, 887 (Ky. 2009).

STANDARDS OF REVIEW

A motion to dismiss for failure to state a claim under CR 12.02 presents a question of law which is reviewed *de novo*. *RAZ, Inc. v. Mercer County Fiscal Court*, 706 S.W.3d 17, 21 (Ky. 2024), *reh'g denied* (Dec. 19, 2024). Further, once the material facts are resolved whether a defendant is protected by official immunity is a question of law which we also review *de novo*. *Rowan Cnty. v. Sloas*, 201 S.W.3d 469, 475 (Ky. 2006), *as corrected* (Sep. 26, 2006) (citations omitted).

ARGUMENTS AND ANALYSIS

Appellants first argue that this Court has jurisdiction to adjudicate their interlocutory appeal. They direct our attention to case law holding that an order denying a claim of immunity is immediately appealable even in the absence of a final judgment. This is true, they argue, because immunity frees a defendant from the burdens of defending the action, not merely from liability. Appellants assert that they squarely raised governmental and qualified official immunity in their CR 12.02(f) motion, and that the order denying their motion is immediately appealable because it rejected their claim of immunity. On this basis, they argue that this Court has jurisdiction to hear their appeal.

In response, Appellee argues that we are without jurisdiction to consider the order on appeal because the circuit court did not state its basis for

denying Appellants' motion to dismiss, nor whether it even considered the issues of governmental or qualified official immunity. In support of this argument, Appellee cites two opinions—*Upper Pond Creek Volunteer Fire Department, Inc. v. Kinser*, 617 S.W.3d 328 (Ky. 2020), and *Chen v. Lowe*, 521 S.W.3d 587 (Ky. App. 2017). In each of these cases, the appellate court determined that it could not consider the interlocutory appeal on the issues of governmental and qualified official immunity because the respective trial courts held that additional findings of fact were required to make a final determination on these issues.

Here, and in contrast to *Upper Pond Creek* and *Chen*, the Jefferson Circuit Court did not hold that additional findings of fact were required to resolve the questions of whether Appellants were shielded by governmental or qualified official immunity. Rather, the Jefferson Circuit Court summarily denied Appellants' motion without explanation.

We find guidance on this issue in the unpublished opinion in *Kentucky Community & Tech. College System v. Kehoe*, No. 2024-CA-1074-MR, 2025 WL 2679741 (Ky. App. Sep. 19, 2025). In *Kehoe*, employees of the Kentucky Community and Technical College System brought an interlocutory appeal asserting that the Hopkins Circuit Court erred by denying their motion to dismiss the complaint on the grounds of governmental and qualified official immunity.

In considering whether it had jurisdiction to adjudicate the appeal, the panel of this Court in *Kehoe* noted that the Hopkins Circuit Court summarily denied the appellants' motion to dismiss without revealing the basis for the denial. The panel in *Kehoe* stated that,

> We cannot decipher whether the Circuit Court even ruled on the issues of immunity because it provided no basis, analysis, reasoning, or authority in its summary denial. And we cannot supplant our own reasoning where there is none.
>
> There are numerous, weighty, and complex issues in contest here. The Circuit Court failed to address them or to rule definitively on the issue of immunity. This Court is unable to determine if the Circuit Court denied the motion to dismiss because it: 1) determined that none of the defendants below was entitled to any form of immunity; 2) agreed with Kehoe that discovery was necessary before it could rule on the issue of immunity; or 3) believed other grounds were meritorious that did not involve immunity[.]

Kehoe, 2025 WL 2679741, at *2. The panel concluded that because the order on appeal did not reveal the basis for the denial of the motion, nor even whether the issue of immunity was considered, it lacked jurisdiction to adjudicate the interlocutory appeal.

The order now before us mirrors the order in *Kehoe*. Here, the Jefferson Circuit Court summarily denied Appellants' motion to dismiss without explanation. Just as in *Kehoe*, we are unable to ascertain if the circuit court determined that none of the Appellants were entitled to any form of immunity, it

agreed with Appellee that discovery was necessary before it could rule on the issue of immunity, or it believed that other grounds were meritorious not involving immunity. Further, and again as in *Kehoe*, while the Jefferson Circuit Court could have revealed the basis for its order, Appellants herein could also have attempted to remedy the situation by filing a motion to alter, amend, or vacate pursuant to CR 52.02. They did not do so.

CONCLUSION

We have jurisdiction to consider an interlocutory order denying a substantial claim of absolute immunity. *Prater*, 292 S.W.3d at 887. In the matter before us, however, though the order on appeal denied Appellants' motion to dismiss, it did not reveal the basis for the ruling. It is just as plausible that the circuit court denied the motion because it believed additional findings of fact were required to settle the issue, as it is that Appellants are not entitled to governmental or qualified official immunity. We will not speculate as to the circuit court's reasoning.

As we cannot discern from the order or the record whether the circuit court denied Appellants' claim of absolute immunity, and based on the reasoning set out in *Kehoe*, we are without jurisdiction to consider this appeal. Such jurisdiction would be found, if at all, from an absolute grant or denial of governmental or qualified official immunity. *Id.* No such grant or denial is

present in the order on appeal. For these reasons, it is hereby ORDERED that this appeal be, and is hereby, DISMISSED.

ALL CONCUR.

ENTERED: 11/06/2026

CHIEF JUDGE, COURT OF APPEALS

ALL CONCUR.

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