

RENDERED: JANUARY 9, 2009; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000936-MR

DEBBIE MEDLEY

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
ACTION NO. 02-CI-00076

JOEY ROGERS

APPELLEE

AND

NO. 2007-CA-001734-MR

DEBBIE MEDLEY

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
ACTION NO. 02-CI-00077

LYNN MEERS, AS GUARDIAN
FOR LESLIE MEERS

APPELLEE

OPINION
AFFIRMING

BEFORE: LAMBERT AND NICKELL, JUDGES; HENRY,¹ SENIOR JUDGE.

LAMBERT, JUDGE: Debbie Medley appeals from an opinion and order denying her motions for summary judgment. After careful review, we affirm.

Joey Rogers has cerebral palsy, a condition which severely affects his motor skills and causes him to drool and shake erratically. He is incapable of normal speech function but has developed a mode of communication with his parents and others who are frequently around him. Leslie Meers is autistic and has severe mental disabilities. She requires constant supervision and assistance with daily needs. Both Joey and Leslie were placed in the Functionally Mentally Disabled (hereinafter “FMD”) program of Shelby County High School, and both were assigned to Debbie Medley’s classroom.

In January 2001, a third party complaint was made to the Cabinet for Families and Children (hereinafter the “CFC”) regarding Medley’s abuse of another student in the FMD program. The complaint resulted in a finding of substantiation on four of the seven claims of abuse, and Medley was removed from the classroom in April 2001. She was allowed to return to the classroom in August 2001 after the findings were amended following Medley’s agreement to complete anger management classes.

¹ Senior Judge Michael L. Henry, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Joey and Leslie each filed suit against Medley on February 7, 2002, seeking declaratory and injunctive relief and damages. They each sought declaration and redress of the rights, privileges, and immunities secured by the Eighth and Fourteenth Amendments to the United States Constitution and pursuant to Title 42 of the United States Code Section 1983 (hereinafter “§ 1983”). They also sought damages for assault, battery, negligence, and intentional infliction of emotional distress (hereinafter “IIED”). Because they are no longer students at Shelby County High School, they have both voluntarily dismissed their claims for injunctive relief.

Various depositions in the record detail the alleged abuse by Medley. First, Lynn Meers, Leslie’s mother, testified that she repeatedly sought explanations for scratches and bruises she found on Leslie’s body. She also testified that the scratches and bruising stopped when Medley was removed from the classroom but resumed when she returned. She further asserts that the bruising and scratches got worse when she inquired about them.

Lillian Clark, an instructional aide hired to work with Medley in the FMD classroom, testified that she became fearful of Medley after Medley retaliated against her for complaining to school officials about Medley’s treatment of students. She further testified to Medley’s erratic behavior and mood swings. She specifically observed Medley videotape a child crying and then play the tape for the rest of the class to show how ugly the child looked when she cried.

Dacey Cochran, another adult instructional aide assigned to the FMD classroom, testified to witnessing hands-on abuse of Leslie and verbal abuse of all the students. Another observer, Seven Counties worker Elizabeth Glass, described being so shocked and upset by Medley's verbal abuse and degradation of Leslie and Joey that she reported it to the school.

Patti Meade, a vocational trainer for the school who worked with Leslie, testified that she once witnessed Medley lay on top of Leslie for forty-five minutes, which left Leslie with a mark on her head where Medley's hand and fingernails had been. She further testified that Medley screamed at and made fun of Joey for things he could not control, such as drooling and having trouble eating.

Joey himself was deposed and described, as best he could with his limited ability to verbally communicate, various types of abuse he witnessed by Medley. He confirmed that he witnessed Medley pinch Leslie and make her cry and that Medley made him feel "hurt" and yelled at him and the others in class.

Alternatively, Medley contends that all actions she took in her classroom were done in good faith for the safety and control of her classroom.

Medley filed a motion for summary judgment arguing that: 1) she is entitled to governmental immunity as to all claims; 2) there is no genuine issue of fact on the Eighth and Fourteenth Amendment claims due to the lack of evidence; and 3) the personal injury claims are time-barred by the statute of limitations found in KRS 403.140. The trial court denied all motions, and this appeal followed.

It is well-settled in this Commonwealth that the denial of a motion for summary judgment is interlocutory and is not appealable. *See Transportation Cabinet, Bureau of Highways, Com. of Ky. v. Leneave*, 751 S.W.2d 36 (Ky.App. 1988). In *Leneave*, this Court held that “[t]he general rule under CR 56.03 is that a denial of a motion for summary judgment is, first, not appealable because of its interlocutory nature and, second, is not reviewable on appeal from a final judgment where the question is whether there exists a genuine issue of material fact.” *Id.* at 37. There is, however, an exception to this general rule, which was also addressed in *Leneave*. “The exception applies where: (1) the facts are not in dispute, (2) the only basis of the ruling is a matter of law, (3) there is a denial of the motion, and (4) there is an entry of a final judgment with an appeal therefrom.” *Id.*

First, there has been no entry of final judgment in this case. Moreover, the record clearly indicates, as highlighted by the allegations outlined in the facts of this opinion, that there are factual disputes as to the Eighth and Fourteenth Amendment claims. Additionally, the record indicates that there are several factual determinations involved in concluding whether the statute of limitations in these cases was tolled under KRS 413.170 due to Joey’s and Leslie’s lack of mental capacity. Therefore, we decline to address either of these issues on appeal, finding that they are interlocutory in nature and evade review.

Medley’s only remaining argument is that she is entitled to summary judgment based on the theory that she is entitled to governmental immunity.

“Official immunity” is immunity from tort liability afforded to public officers and employees for acts performed in the exercise of their discretionary functions. It rests not on the status or title of the officer or employee, but on the function performed. . . . [W]hen sued in their individual capacities, [as in the case at hand,] public officers and employees enjoy only qualified official immunity, which affords protection from damages liability for *good faith judgment* calls made in a legally uncertain environment. Qualified official immunity applies to the negligent performance by a public officer or employee of (1) discretionary acts or functions; . . . (2) *in good faith*; and (3) within the scope of the employee's authority.

Yanero v. Davis, 65 S.W.3d 510, 521-22 (Ky. 2001)(internal citations omitted)(emphasis added).

The allegations as outlined in the facts of this opinion illustrate that serious factual disputes exist as to whether Medley was acting in good faith and even whether she was acting within the scope of her authority as a teacher. In light of the factual disputes involved in the determination of Medley’s alleged qualified immunity, we find that the appeal is interlocutory in nature and evades review.

See Mitchell v. Forsyth, 472 U.S. 511, 530, 105 S.Ct. 2806, 2817, 86 L.Ed.2d 411 (1985) (holding that “denial of a claim of qualified immunity, to the extent it turns on an issue of law, is an appealable ‘final decision’ ”); *see also Johnson v. Jones*, 515 U.S. 304, 313, 115 S.Ct. 2151, 2156, 132 L.Ed.2d 238 (1995) (emphasizing that to be immediately appealable, the qualified immunity issue must not involve a genuine factual dispute, but must be “a purely legal one”).

We accordingly affirm the opinion and order of the Shelby Circuit
Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Frith Stewart
Stephen C. Emery
Crestwood, Kentucky

BRIEF FOR APPELLEES ROGERS
AND MEERS:

F. Larkin Fore
Sarah Fore Whittle
Louisville, Kentucky