

RENDERED: APRIL 10, 2009; 10:00 A.M.  
NOT TO BE PUBLISHED

SUPREME COURT GRANTED DISCRETIONARY REVIEW:  
JANUARY 13, 2010  
(FILE NO. 2009-SC-0280-D)

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-001302-MR

HOSPITAL OF LOUISA, D/B/A THREE  
RIVERS MEDICAL CENTER

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT  
HONORABLE JOHN DAVID PRESTON, JUDGE  
ACTION NO. 07-CI-00103

JOHNSON COUNTY FISCAL COURT

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: CAPERTON, THOMPSON, AND WINE, JUDGES.

CAPERTON, JUDGE: Appellant, Hospital of Louisa (d/b/a Three Rivers Medical Center and hereinafter referred to as “Three Rivers”) appeals the June 12, 2008,

Order of Summary Judgment issued by the Johnson Circuit Court in favor of the Appellee, Johnson County Fiscal Court. After a thorough review, we affirm.

The issue before us in this case is whether the Johnson County Fiscal Court (“County”) is responsible for the payment of medical bills incurred by prisoner Ernest Napier (“Napier”) while released on bail<sup>1</sup> from the county jail. This appears to be an issue of first impression in this Commonwealth.

The critical facts in the matter *sub judice* are undisputed. Napier was indicted on July 21, 2006, in the Johnson County Circuit Court on charges of first-degree assault and persistent felony offender, second degree. He was found to be indigent, and a public defender was appointed to him. A bond was set for Napier in the amount of \$50,000 cash on August 3, 2006. At this time, Napier was being held at the Big Sandy Regional Correction Center.

On August 8, 2006, Napier’s bond was changed to unsecured, and he was released from jail on bail with the condition that he receive medical treatment and report back to the jail immediately upon completion of the treatment. During Napier’s release on bail, he sought medical services from Three Rivers. On August 11, 2006, upon completion of his medical procedure, Napier reported back to and was again incarcerated at the Big Sandy Regional Correction Center. Napier’s hospital bills for this visit amounted to \$34,477.17.

---

<sup>1</sup> Throughout this opinion the terms *bail* and *bond* are used. *Bail*, a verb, is defined as “To obtain the release of (oneself or another) by providing security for future appearance . . . .” *Black’s Law Dictionary* (Eighth Edition, p. 150). *Bond*, a noun, is defined as “An obligation; a promise,” and as “A written promise. . . .” *Black’s Law Dictionary* (Eighth Edition, p.187).

On August 30, 2006, Napier was again released from jail on an unsecured bond with the condition that he receive medical treatment and report back to the jail immediately upon completion of the treatment. Following that release, Napier was again a patient at Three Rivers. After completing treatment on September 1, 2006, Napier again reported back to Big Sandy Regional Correction Center and resumed his incarceration. Napier's medical bills for this hospital visit amounted to \$26,057.87. As of the date of this appeal, neither of these bills have been paid.

We note that Napier was released for medical treatment on two additional occasions while incarcerated at Big Sandy Regional Correction Center, but at neither of these times was he a patient at Three Rivers. Accordingly, any liability for medical bills related to those releases is not at issue in the instant appeal. We also note that Napier's bond was set and remained at \$50,000 cash from August 2, 2006, until October 31, 2006, aside from the instances cited above.

After the foregoing events transpired, Three Rivers sought payment of the medical bills by filing suit in Johnson County Circuit Court, alleging that the County was responsible for payment of Napier's bills, as he was a "prisoner" at the time of treatment. In response, the County asserted that it was not responsible for payment of the bills as Napier was not in custody at the time treatment was rendered. Ultimately, both parties filed motions for summary judgment. The court below denied the motion for summary judgment requested by Three Rivers and

granted summary judgment in favor of the Johnson County Fiscal Court. This appeal by Three Rivers followed.

As we have noted, this issue is one of first impression in the Commonwealth. Certainly, it is clear that according to Kentucky Revised Statutes (KRS) 441.045(3), “the cost of providing necessary medical, dental, and psychological care for indigent prisoners<sup>2</sup> in the jail shall be paid from the jail budget.”<sup>3</sup> Accordingly, the issue determinative of this appeal is whether Napier was a “prisoner” at the time that he received care at Three Rivers.

The County asserts, and the court below held, that Napier was not a person "confined in jail" at the time of incurring his medical bills and, as such, was not a prisoner. In contrast, Three Rivers asserts that under a literal interpretation of "confined in jail," no person who receives treatment at a hospital is at that very moment "confined in jail." Nevertheless, Three Rivers asserts that Napier effectively remained in custody at the time of treatment and was not “released” on bail because he was not truly at liberty to do as he pleased pending his next court appearance.<sup>4</sup>

---

<sup>2</sup> As defined by KRS 441.005(3), “prisoner” means any person confined in jail pursuant to any code, ordinance, law, or statute or any unit of government, and who is:

- (a) Charged with or convicted of an offense; or
- (b) Held for extradition as a material witness; or
- (c) Confined for any other reason.

<sup>3</sup> While certain exceptions to this responsibility are outlined in the remainder of the statute, they are not pertinent for purposes of this appeal.

<sup>4</sup> We find this an interesting argument in that any defendant released on bail with conditions is not free to do as he pleases pending his next court appearance.

We note that KRS 520.010(2) defines *custody* as “restraint by a public servant pursuant to a lawful arrest, detention, or order of court for law enforcement purposes, but does not include supervision of probation, or parole or constraint incidental to release on bail.” As noted, Three Rivers asserts that Napier was “in custody” as that term is defined by the statute. Specifically, Three Rivers argues that Napier was not on probation or parole and asserts that at no time did he “make bail.” Three Rivers asserts that Napier was still a prisoner despite this limited release, because at no time was he free to do anything other than receive his medical treatment, after which he was required to return to incarceration.

In contrast, the County argues, and the court below held, that in accordance with KRS 520.010(2), Napier was released on bail at the time of treatment, and, therefore, was not in custody. Accordingly, the County argues that Napier was not in custody and thus not a "prisoner" at the time of incurring the bills.

Certainly, the law in this Commonwealth is clear that while one is in the custody of the jailer he is “in jail,” regardless of whether or not one is confined in a specific jail building. *See Saylor v. Commonwealth*, 93 S.W.48, 49 (Ky. App. 1906). If this were not so, when prisoners were transported from one location to another, they would cease to be “in jail” during that time. Accordingly, under the definition set forth by our courts, one can remain “in jail,” even outside of the physical confines of the building. Thus, prisoners can be taken to visit the doctor

or dentist, or to work release, by the jailer and still remain “in jail” for legal purposes.

Nevertheless, such was not the case in the matter *sub judice*. Three Rivers attempts to argue that Napier was “in custody” as that term is defined by the statute, but we disagree. First, we note that the statute, at its outset, states that the definitions apply to KRS Chapter 520, “unless the context otherwise requires.” Second, this Court finds that the statutes concerning medical liability for payment of prisoner medical expenses are not in KRS Chapter 520. Third, even if custody for purposes of liability for medical expenses were construed to be within the definitions set forth in KRS Chapter 520, we believe the term as it applies to liability for medical expenses to fit within the exception “unless the context otherwise requires.” Regardless, and even if the statutory definition of custody were to apply and the context did not “otherwise require,” we cannot find that Napier was “in custody” as that term is defined.

Indeed, the fallacy inherent in the argument set forth by Three Rivers is the assumption that Napier was in custody when, in fact, he was released on bail, albeit with conditions. Napier was not transported to the hospital by a jailer; nor did he leave the hospital in the custody or care of anyone from the detention facility. There were no deputy jailers tending to Napier while he was released; Napier was free to move about and make free choices.

This enabled Napier to choose his physician or surgeon, his method of treatment, and the time and place where treatment would occur. Indeed, it was

Napier who made arrangements for his treatment and not the jail where he had been incarcerated. Napier acted on his own as an individual released on bail to make decisions about his own medical treatment free of intervention by the jail, jailer, or county fiscal court.

Accordingly, looking at the statutory definitions alone, we cannot find that Napier was “in custody” at the time of his treatment. We therefore turn to an analysis of additional statutory and caselaw relied upon by Three Rivers in support of its arguments.

Three Rivers also relies upon our statutory definition of *escape* for purposes of asserting that Napier was still “in jail” at the time he received treatment. KRS 520.010(5) defines *escape* as “departure from custody or the detention facility<sup>5</sup> in which a person is held or detained when the departure is unpermitted, or failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited period.”

On that basis, Three Rivers asserts that Napier in effect remained a prisoner because he could have been charged with escape if he had not returned. In support of its argument in this regard, Three Rivers relies upon *Reynolds v. Commonwealth*, 113 S.W.3d 647 (Ky. App. 2003). In that case, an inmate failed to return to jail following work release, leading this Court to uphold his conviction for escape. Having reviewed that case, we do not find it to be on point in the matter *sub judice*.

---

<sup>5</sup> KRS 520.010(4), in pertinent part, defines *detention facility* as any building and its premises used for the confinement of a person charged with or convicted of an offense.

Based upon our review of the record, Napier was properly bonded. Napier was not released on furlough, nor was he released on any type of work release, contrary to the fact situation in *Reynolds*. In those situations, prisoners do not sign bond papers but are released from jail pursuant to an order of the court delineating the specific terms of release, or they leave the confines of a detention facility but remain under the supervision and in the custody of the jailer. Further, in those situations, the prisoners technically remain “in custody,” even though they are not within the actual confines of the jail.

As we have already established, Napier’s situation was different, insofar as he was properly bonded and effectively released to receive treatment at a place and time of his choosing and to return to jail on his own recognizance. Accordingly, we do not find either KRS 520.010(5) or *Reynolds* to be determinative of the issue in this instance.

Three Rivers also cites this Court to the decision rendered in *State of Kansas v. Jones*, 673 P.2d 455 (Kan. App. 1983), in support of its argument concerning escape. In that case, a prisoner was delivered to a hospital by the sheriff for medical treatment. Upon completion of treatment, the prisoner failed to return to the prison and was convicted of escape. Again, we find this case to be distinguishable. As the court below correctly noted, the prisoner in *Jones* was not released on bail, but was in fact transported to the medical facility by the sheriff after a specific order was entered by the court granting him temporary leave. That situation is factually different from the matter *sub judice*, wherein Napier was



released on bail to receive treatment at a facility of his choice and at the time and in the manner in which he chose.

We find the recently rendered case of *Weaver v. Commonwealth*, 156 S.W.3d 270 (Ky. 2005), to be further illustrative of our point in this regard. In that case, the defendant was being held on home incarceration prior to trial. In rendering its decision, our Kentucky Supreme Court held that while on home incarceration, the defendant was “in custody” for legal purposes, and, accordingly, could be convicted of escape.

In so finding, the Supreme Court contrasted a home incarceration situation with a situation in which an individual is released on bail, and noted the distinction between the two. The Court in *Weaver* rejected the argument that home incarceration was a constraint incidental to release on bail that precluded prosecution for escape in finding that home incarceration was a pretrial release, not a release on bail.

The latter situation is exactly the situation in the matter *sub judice*. Napier was released on bail, with the conditions incidental to his bail being his receipt of medical treatment and subsequent return to the jail upon completion of same. Pursuant to the reasoning in *Weaver*, Napier could not have been convicted of escape while on bail if he had failed to return to jail because he was not in custody. As noted, Three Rivers used reversed reasoning to assert that Napier must have been in custody while on bail because a failure to return to jail would

have constituted escape. Based on the decision of our Supreme Court in *Weaver*, that argument fails.

Three Rivers also cites this Court to the Tennessee case of *Bryson v. Tennessee*, 793 S.W.2d 252 (Tenn. 1990), in support of its argument that the county should be responsible for Napier's bills. In that case, Bryson was a prisoner released on a three-day furlough from a state correctional institution when he was injured in an automobile accident. Bryson received medical treatment, and at issue was which party would be responsible for the bills incurred as a result thereof. In reviewing the matter, the court held that Bryson was to be considered an inmate for purposes of determining the party responsible for the bills. Upon review, we do not find this case to be on point in the matter *sub judice*.

In distinguishing *Bryson* from the instant matter, we note that the critical distinction is the difference between furlough and bail. A furlough is a very limited release within a restrictive time frame and is generally given by court order for the accomplishment of a specific purpose, such as attending a funeral or attending a substance abuse treatment program not offered in jail.<sup>6</sup> By contrast, bail is a release from custody pursuant to certain conditions established by the court and is much broader in both its scope and the freedom it allows to the individual to whom it applies.

As we have established, Napier was released on bail, not furlough. In signing the bail bond papers, Napier was advised that he was released from

---

<sup>6</sup> We view furlough as a pretrial release and not bail.

custody on the condition that he would be responsible for seeking necessary medical treatment and returning to the jail at a designated time. Upon releasing Napier, the County retained no control over where he would receive treatment, what manner of treatment he received, how long that treatment would last, or even *if* he would receive treatment. Such a situation certainly stands in stark contrast to that of a person released on furlough for a definitively established time period with specific conditions set by the Court. Accordingly, we find *Bryson* to be inapplicable to the matter *sub judice*.

Finally, we note that in making its arguments, the County cited this Court to the case of *Cooper v. Commonwealth*, 902 S.W.2d 833 (Ky. App. 1995). We find the reasoning utilized in *Cooper* to be pertinent to our decision in this matter. In that case, the defendant had been released on bail and, as a condition of his bail, had been placed on yard restriction by the court. Accordingly, the issue in that matter was whether a court-ordered, presentence “yard restriction” constituted “custody” for which credit for time served must be granted.

In reviewing the matter, this Court held that the defendant was not in custody while on yard restriction, would not have been subjected to prosecution for escape had he violated terms of his release, and was not required by court to maintain a monitoring device in his home. In the matter *sub judice*, the court below drew a parallel between the situation of Cooper, who was released on bail and confined to his yard, and Napier, who was released on bail and effectively confined to the medical center. Upon review, we agree and find this to be further

support for our conclusion that Napier was not in custody at the time treatment was rendered.

As with Napier in the instant case, Cooper was a properly bonded individual who accepted a condition pursuant to that bail bond, in contrast to the situation of the individual on home incarceration in *Weaver*. In the instant matter, as in *Cooper*, Napier signed a release form, at which time he was released on bail, albeit with conditions. Arguably, Napier had much more freedom than did Cooper while on bail, being free to choose where, when, and how he would receive treatment for his condition. Further, as was the case in *Cooper*, while released on bail Napier was apparently not subjected to any surveillance or monitoring whatsoever.

Accordingly, we simply cannot find that Napier was in custody at the time that he received treatment at Three Rivers. Indeed, as we stated in *Cooper*, “As the definition currently stands in Kentucky law, restrictive terms on bond-released time do not amount to custody and are indeed still a privilege granted to an arrestee.” *See Cooper, supra* at 836.

Three Rivers attempts to distinguish *Cooper* from the matter *sub judice* by stating that in *Cooper*, the yard restriction was not in any way attributable to a financial inability to post a cash bond, whereas Napier remained incarcerated because he could not make bail. We reject this argument, as clearly, Napier *did* make bail in the matter *sub judice*, albeit with conditions. Accordingly,

we find *Cooper* to be analogous and reaffirm our conclusion that Napier was not in custody at the time he received treatment at Three Rivers.

Having found that Napier was not in custody at the time he received treatment at Three Rivers, we need not address the remainder of the arguments set forth by the parties concerning the rate at which the bills should be paid, or the interest applicable thereto.

Accordingly, for the foregoing reasons, we hereby affirm the June 12, 2008, order of the Johnson Circuit Court, the Honorable John David Preston, presiding.

THOMPSON, JUDGE, CONCURS.

WINE, JUDGE, CONCURS IN RESULT AND FILES SEPARATE OPINION.

WINE, JUDGE, CONCURRING: It is clear that the appellee, Johnson County Fiscal Court, through a carefully coordinated effort, has avoided the onerous obligation of paying for a prisoner's medical care. While such a procedure (convincing the trial judge<sup>7</sup> to release an individual charged with a violent offense long enough to be treated at a local medical facility) may be "penny wise," it may ultimately prove "pound foolish."<sup>8</sup>

Because the court entered a summary judgment in favor of the County, our review on appeal is whether "the trial court correctly found that there

---

<sup>7</sup> The trial judge who granted the various bail bonds in question is not the same judge who reviewed the practice and entered the summary judgment order.

<sup>8</sup> Robert Burton, *The Anatomy of Melancholy* (1621).

were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1998). The County and Three Rivers Medical Center filed cross-motions for summary judgment, conceding there were no factual issues. Our review is conducted pursuant to a *de novo* standard since we analyze questions of law rather than those of fact. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000).

While Three Rivers engages in an interesting analysis about the difference between potential charges of escape<sup>9</sup> or bail jumping,<sup>10</sup> neither is relevant to whether a trial judge may release a defendant from the jail on his own

---

<sup>9</sup> KRS 520.020: Escape in the first degree –

(1) A person is guilty of escape in the first degree when he escapes from custody or a detention facility by the use of force or threat of force against another person.

(2) Escape in the first degree is a Class C felony.

KRS 520.030: Escape in the second degree –

(1) A person is guilty of escape in the second degree when he escapes from a detention facility or, being charged with or convicted of a felony, he escapes from custody.

(2) Escape in the second degree is a Class D felony.

<sup>10</sup> KRS 520.070: Bail jumping in the first degree –

(1) A person is guilty of bail jumping in the first degree when, having been released from custody by court order, with or without bail, upon condition that he will subsequently appear at a specified time and place in connection with a charge of having committed a felony, he intentionally fails to appear at that time and place.

(2) In any prosecution for bail jumping, the defendant may prove in exculpation that his failure to appear was unavoidable and due to circumstances beyond his control.

(3) Bail jumping in the first degree is a Class D felony.

recognizance for a limited period of time. Rather, we look to both the Kentucky Rules of Criminal Procedure (“RCr”) and Kentucky Revised Statutes to determine the trial court’s authority to grant such a release.

RCr 4.00 provides:

(c) “Conditions of release” may include financial as well as nonfinancial requirements upon which the defendant's release is dependent. All methods of pre-trial release include the conditions of release requiring the defendant to appear before court when required **and to submit himself or herself to the orders and processes of the court.**

(d) “Pre-trial release” is release of a defendant from custody before his or her trial date. It may be secured by any authorized method of pre-trial release including but not limited to release on personal recognizance, on nonfinancial conditions or upon execution of a bail bond. It does not include the procedure for issuance of citation as provided in KRS 431.015.

(Emphasis added.)

RCr 4.12 outlines nonfinancial conditions of release which may be imposed when a defendant is released on his or her own recognizance:

If a defendant's promise to appear or his or her execution of an unsecured bail bond alone is not deemed sufficient to insure his or her appearance when required, the court shall impose the least onerous conditions reasonably likely to insure the defendant's appearance as required. Such conditions of release may include but are not limited to placing the defendant in the custody of a designated person or organization agreeing to supervise the defendant **or to placing restrictions on the defendant's travel, association or place of abode during the period of release.**

**Commensurate with the risk of nonappearance the court may impose any other condition including a**

**condition requiring the defendant to return to custody after specified hours.**

(Emphasis added.)

RCr 4.12 mirrors the language in KRS 431.520, which provides:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by the Supreme Court as provided by KRS 431.540, unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following **conditions** of release:

- (6) Impose any other condition deemed reasonably necessary to assure appearance as required, **including a condition requiring that the person return to custody after specified hours . . . .**

(Emphasis added.)

Thus, a court may grant a pretrial release for a limited period of time and require the defendant to return to the custody of the local regional or county jail.

Although not binding, rather instructive is a May 22, 1991, opinion of the Office of Attorney General which dealt with this issue. In response to Ms. Elizabeth M. Blincoe, an assistant Boone County Attorney, the Attorney General wrote:

By letter of February 20, 1991, you asked that we indicate when a county's liability for necessary medical care of indigent prisoners ceases, in the circumstance of a person who was a prisoner when hospitalized, whose



status as a prisoner expires before the individual's release from the hospital. You cited three scenarios that give rise to your question: **(1) A prisoner's bond is changed so that the individual may be released on recognizance,** (2) the prisoner's term of confinement ends while the individual is still hospitalized, and (3) the prisoner is released upon probation of a portion of his or her sentence.

**In our view, county liability for necessary medical care of an indigent person, who is hospitalized while a prisoner of the county jail, ceases when an individual's status as a prisoner ceases.**

As pointed out in your letter, the cost of necessary medical care for prisoners in the county jail is to be paid from the county jail budget, pursuant to KRS 441.045(3) (subject to exceptions provided therein).

In our view, where a statute requires that the cost of necessary medical care [KRS 441.045(9)] for indigent prisoners in the county jail shall be paid from the county jail budget [KRS 441.045(3)], such requirement, and thus liability, ceases when an individual is no longer a prisoner. **Under the three scenarios you cite, when an individual's status as a prisoner terminates for any of the reasons you mention (or for other reasons), the county's liability for necessary medical care pursuant to KRS 441.045(3) simultaneously terminates.** Cf., OAG 85-54, copy enclosed.

AOG opinion 91-77 (Emphasis added).

While I would affirm the summary judgment granted by the trial court, the real issue before Johnson County, and any county which engages in this practice, is whether they are acting “pound foolish.” Ernest Napier, a repeat offender, now charged with an act of violence, was released on his own recognizance without supervision on several occasions, solely to seek medical

treatment. The trial judge denied the defendant's other various *pro se* as well as counsel-filed motions to be released on his own recognizance or on a property bond. A court's decision to set a bail bond is governed by RCr 4.16 (1):

The amount of bail shall be sufficient to insure compliance with the conditions of release set by the court. It shall not be oppressive and shall be commensurate with the gravity of the offense charged. In determining such amount the court shall consider the defendant's past criminal acts, if any, the defendant's reasonably anticipated conduct if released and the defendant's financial ability to give bail.

Apparently the trial judge decided that Napier was at risk, either not to return or to commit additional offenses, if released on his own recognizance or on a property bond. Respectfully, those same risks exist even when released on one's own recognizance for medical treatment.

Finally, the County apparently overlooked the provisions under KRS 441.045(7), which allow for reimbursement of part of the funds expended for the care of indigent prisoners:

When the cost of necessary medical, dental, or psychological care for a prisoner exceeds two thousand dollars (\$2,000), as calculated by using the maximum allowable costs to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, the state shall reimburse the county for that portion of the costs that exceeds two thousand dollars (\$2,000). The reimbursement shall be subject to the following terms and conditions:

- (a) The care is necessary as defined in subsection (10) of this section;

(b) The prisoner is indigent as defined in subsection (8) of this section, or is uninsured; and

(c) No state reimbursement to the county for care provided by physicians, hospitals, laboratories, or other health care providers shall exceed the maximum payments allowed to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, except as provided in subsection (11) of this section.

While it may have taken time for the state to reimburse the County for the medical costs incurred for Napier's treatment, the community would not have been exposed to the risks the trial judge perceived. One would not envy the county official who is called upon to explain why public safety played second fiddle to paying necessary medical costs of an indigent prisoner.

BRIEFS FOR APPELLANT:

Eldred E. Adams, Jr.  
Louisa, Kentucky

BRIEF FOR APPELLEE:

Michael S. Endicott  
Paintsville, Kentucky