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TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000275-MR

SARAH LAWRENCE, AS ADMINISTRATOR
OF THE ESTATE OF RILEY LAWRENCE;
ANGELA WADLINGTON, AS ADMINISTRATOR
OF THE ESTATE OF CLAUDIA WADLINGTON;
SARAH LAWRENCE; DAVID LAWRENCE;
ANGELA WADLINGTON AND HARRY
WADLINGTON

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NO. 09-CI-004433

ALLEN GEORGE AND
KENIELLE FINCH

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND VANMETER, JUDGES; LAMBERT,¹ SENIOR
JUDGE.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

VANMETER, JUDGE: Sarah Lawrence, as administrator of the estate of Riley Lawrence, and Angela Wadlington, as administrator of the estate of Claudia Wadlington (hereinafter collectively referred to as “the estates”) appeal from the Jefferson Circuit Court’s order granting summary judgment in favor of Officer Allen George. For the following reasons, we affirm.

In January 2006, Kenielle Finch was released from prison and in May 2006, Officer George was assigned as his parole officer. Finch was arrested in September 2007 by Louisville Metro Police on charges of resisting arrest and possession of a firearm by a felon. Officer George did not discover the charges until he conducted a records check in preparation for Finch’s scheduled October 8, 2007, report date. On October 8, 2007, Finch failed to report. Officer George initiated a home visit to Finch’s residence, at which time a neighbor told him that Finch had not been home in weeks. Officer George left a note directing Finch to report to his office on October 22, 2007. Finch again failed to report. On October 25, 2007, Officer George submitted a supervision report to the Parole Board requesting a parole violation warrant for, among other things, absconding parole supervision. The Parole Board issued a parole violation warrant the next day.

Finch remained an absconder with no contact with the Division of Probation and Parole until July 25, 2008, when he struck two minor children, Claudia Wadlington and Riley Lawrence, with a car while fleeing from the police. Angela Wadlington, Claudia’s parent, was also struck but she survived. Finch was

convicted of murder (two counts) and assault. The estates filed the underlying wrongful death action against Finch and Officers George, Jennifer King and Evan Roach (hereinafter collectively referred to as “the officers”) who were employed by the Department of Corrections, Division of Probation and Parole, at the time of the incident. The estates alleged that but for the officers’ failure to fulfill their statutory duties in supervising and arresting Finch during the fifteen months prior to the incident, Finch would not have killed Claudia and Riley. The officers moved for summary judgment, which the trial court granted on the basis that they owed no duty to the victims, the harm was not foreseeable, Finch’s actions were a superceding cause of the incident, and the officers were not negligent. The estates now appeal the court’s granting of summary judgment in favor of Officer George.

As an initial matter, summary judgment shall be granted only 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.” CR² 56.03. The trial court must view the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991) (citations omitted). Further, “a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least

² Kentucky Rules of Civil Procedure.

some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.* at 482 (citations omitted).

On appeal from a granting of summary judgment, our standard of review is whether the trial court correctly found that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Hammons v. Hammons*, 327 S.W.3d 444, 448 (Ky. 2010) (citing CR 56.03). Since the parties do not suggest that issues of material fact exist in this case, the only issue is the legal effect of those undisputed facts. As for legal conclusions, we review the trial court’s summary judgment ruling *de novo*. *Hammons*, 327 S.W.3d at 448.

The estates argue that the trial court erred by granting Officer George summary judgment on the claim that he negligently carried out his duties. Officer George asserts that he is entitled to qualified official immunity for any actions or omissions occurring while serving in his capacity as a parole officer and therefore he is entitled to judgment as a matter of law on the issue of his individual liability. While the trial court did not rule on the issue of qualified official immunity, though Officer George raised it, we agree with Officer George and hold that he is entitled to qualified official immunity under the circumstances of this case.

Public officers and employees are entitled to qualified official immunity for negligent acts or omissions when the act or omission was (1) a discretionary act or function, (2) made in good faith, and (3) within the scope of the employee’s authority. *Yanero v. Davis*, 65 S.W.3d 510, 522 (Ky. 2001). Discretionary acts are described as “those involving the exercise of discretion and judgment, or personal

deliberation, decision, and judgment[.]” *Id.* (citation omitted). Conversely, ministerial acts or functions, for which qualified official immunity is not afforded, require “only obedience to the orders of others, or when the officer’s duty is absolute, certain, and imperative, involving merely execution of a specific act arising from fixed and designated facts.” *Id.* (citation omitted). The determination of whether a particular act or function is discretionary or ministerial focuses on the dominant nature of the act or function and is inherently fact-sensitive. *Haney v. Monsky*, 311 S.W.3d 235, 240 (Ky. 2010). In the context of qualified official immunity, “[s]ummary judgments play an especially important role’, as the defense renders one immune not just from liability, but also from suit itself.” *Id.* (citations omitted).

In this case, the estates’ primary argument is that Officer George negligently performed his duties as they related to his supervision of Finch. Specifically, they claim that Officer George should have arrested Finch in 2007, upon discovering that he had violated the terms and conditions of parole, and that Officer George failed to investigate Finch’s parole violation in August 2006, when Finch was arrested for trafficking in a controlled substance and tampering with physical evidence. The estates also assert that Officer George failed to ensure that Finch was complying with the terms of his parole in other respects, such as refraining from visiting establishments that serve alcohol, notifying Officer George of address changes, paying child support, and working to obtain a GED. The estates charge Officer George with actual and constructive knowledge of Finch’s criminal

history of drug trafficking, fleeing and evading the police, and various traffic-related offenses and claim that he should have supervised Finch accordingly.

KRS³ 439.480 sets forth the duties of probation and parole officers, including the duty to investigate all cases referred to them for investigation, inform parolees of the conditions of their parole, remain informed of the conduct of parolees who are under their supervision, and keep detailed records of their work. KRS 439.430 further provides that “[a]ny parole officer having reason to believe that a parolee . . . has violated the terms of his or her release **may** arrest the parolee . . . without a warrant[.]” (Emphasis added). A plain reading of the statutes defining Officer George’s duties does not require him to arrest a parolee upon violation of the terms of release, but instead grants him the discretion to do so. And Kentucky courts have held that the task of supervising others is largely left to the independent discretion and judgment of the supervisor. *See Haney*, 311 S.W.3d 235 (city zoo camp counselor’s duties in supervising a blindfolded hike activity were discretionary); *Rowan County v. Sloas*, 201 S.W.3d 469, 478 (Ky. 2006) (supervision of prisoner road crew was a discretionary act); *Moore v. Commonwealth*, 846 S.W.2d 715 (Ky.App. 1992) (Corrections Cabinet was immune from liability for alleged negligent supervision of a probationer).

Here, the record shows that upon learning of Finch’s September 2007, arrest and Finch’s failure to report as scheduled in October 2007, Officer George promptly initiated a home visit and left a note directing Finch to report to his

³ Kentucky Revised Statutes.

office. When Finch failed to report again, Officer George promptly submitted a supervision report to the Parole Board requesting a parole violation warrant for, among other things, absconding parole supervision. Thus, the record shows that Officer George properly exercised his discretionary duties in supervising Finch and is entitled to qualified official immunity in these circumstances.

The order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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