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Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000633-MR

WHITNEY KAREKEN AND
WHITNEY KAREKEN, AS PARENT
AND NEXT FRIEND OF LAYTON
KAREKEN, A MINOR — APPELLANTS

v.

APPEAL FROM MERCER CIRCUIT COURT
HONORABLE DARREN W. PECKLER, JUDGE
ACTION NO. 09-CI-00331

CHRIS KEHRT, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS
MERCER COUNTY SHERIFF;
ERIC BARKMAN INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS
MERCER COUNTY DEPUTY SHERIFF;
RICK MOBERLY, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS
MERCER COUNTY DEPUTY SHERIFF;
MATHEW SWABEY INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS
MERCER COUNTY DEPUTY SHERIFF; AND
MERCER COUNTY, KENTUCKY — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON, KELLER AND THOMPSON, JUDGES.

KELLER, JUDGE: Whitney Kareken (Kareken) and Layton Kareken (Layton) appeal from an order of the Mercer Circuit Court granting summary judgment in favor of the Appellees. For the following reasons, we affirm.

FACTS

On August 7, 2008, Kareken was in a single car accident while driving on U.S. 127 in Mercer County, Kentucky. Her son, Layton, who was two years old at the time, was in the vehicle. Mercer County Sheriff's Deputies arrived on the scene. They first handcuffed Kareken and subsequently used a taser.

Kareken filed suit in the Mercer Circuit Court against the Appellees in their official and individual capacities. In her complaint, Kareken alleged that she suffered a seizure, which prevented her from responding to the deputies, and that the deputies were aware of that. Kareken asserted a claim under 42 U.S.C. § 1983 against Deputy Rick Moberly (Deputy Moberly), Deputy Eric Barkman (Deputy Barkman), and Deputy Matthew Swabey (Deputy Swabey) alleging that the use of the taser violated her constitutional rights. She also alleged that Sheriff Chris Kehrt's (Sheriff Kehrt) supervision of his deputies violated her constitutional rights.

Additionally, Kareken asserted state claims of battery and outrage against Deputies Barkman, Moberly, and Swabey, and negligent supervision against Sheriff Kehrt. Finally, Kareken claimed that Mercer County was vicariously liable for the conduct of Deputies Barkman, Moberly, and Swabey and of Sheriff Kehrt under the doctrine of *respondeat superior*. Layton joined in the outrage claim.

Kareken testified by deposition to the following. On the date of the accident, she had a seizure and does not remember anything from approximately ten minutes before the accident until she was taken to the hospital. Kareken was eventually diagnosed with epilepsy after the accident. According to Kareken, she had a few seizures after the accident and now takes medication to control them.

Deputy Moberly testified by deposition to the following. On the date of Kareken's accident, he was off duty and was going home from the grocery store. He saw the accident on the side of the road and called the sheriff's office. The sheriff's office told him that they were aware of the accident; that Deputy Barkman was on his way there; and that the driver of the vehicle that had wrecked was trying to leave the scene and run into traffic.

Deputy Moberly testified that, when he arrived on the scene of the accident, Kareken was acting very strange and as if she was under the influence of drugs. He attempted to talk to Kareken, but she kept screaming and cursing at him. Kareken then tried to get away from the vehicle, and Deputy Moberly grabbed her and sat her on the ground. Deputy Moberly put one hand on Kareken's shoulder

and his other hand on Kareken's hands, holding her until he had assistance. When Deputy Barkman arrived, they placed Kareken in handcuffs. According to Deputy Moberly, Kareken still did not calm down and kept screaming, kicking, and biting. Thereafter, Deputy Barkman deployed the taser on Kareken's leg. Deputy Moberly testified that this helped calm Kareken for 30 seconds to a minute.

After the first tase, Deputies Moberly and Barkman tried to talk to Kareken, but she would not calm down. Deputy Barkman tased Kareken again, and she calmed down for a couple of seconds. They then got Kareken up and put her in Deputy Barkman's police cruiser. Kareken was then taken to the emergency room.

Deputy Moberly further testified that a woman on the scene, Carrie Baratta (Baratta), told him that Kareken hit her in the face. Deputy Moberly did not recall anyone advising him that Kareken was having a seizure, and he never heard Baratta tell him to leave Kareken in the car.

Deputy Barkman also testified by deposition to the following. When he arrived on the scene of the accident, Kareken was screaming, kicking, and attempted to bite him. He told Kareken several times that he would tase her if she did not calm down. He then tased Kareken two times. According, to Deputy Barkman, after each tase, Kareken briefly calmed down, but then she started screaming, cursing, and kicking again.

According to Deputy Barkman, when the Emergency Medical Services (EMS) arrived, one of the EMS personnel said they could not treat Kareken while she was kicking, thrashing, and screaming. Deputy Barkman then put Kareken in

his police cruiser and took her to the hospital. On the way to the hospital, Kareken continued to kick, scream, and even banged her head a couple of times. After they arrived at the hospital, the emergency room personnel asked him to uncuff Kareken. Once he did, Kareken seemed to calm down.

Because he was told that Kareken hit Baratta, Deputy Barkman talked to Baratta after he put Kareken in his police cruiser. He told Baratta how she could file charges against Kareken. According to Deputy Barkman, he did not know that Kareken was having a seizure, and he never heard anyone tell him that Kareken was having a seizure. However, Barkman acknowledged that, in the Use of Force Form he filled out after the incident, he noted that he "had nothing to charge [Kareken] with like DUI etc. and no damage to my car. We were waiting to see if she had medical issues like a seizure etc." Deputy Barkman explained that it did not seem like Kareken was having a seizure, but he mentioned a seizure in his report because that was the only medical issue he thought Kareken could possibly have had. Barkman noted that he did not know if Kareken was high, drunk, or having medical issues.

Deputy Swabey testified by deposition to the following. He was present on the date of Kareken's accident and arrived on the scene after Deputies Moberly and Barkman. When he arrived, Kareken was already in handcuffs, and was kicking, screaming, and cursing. He spoke with Baratta because Baratta said that Kareken hit her. Although Baratta told him she was a nurse, she never said anything about Kareken having a seizure.

According to Deputy Swabey, while he spoke with Baratta, he kept an eye on the other Deputies. Kareken was repeatedly warned prior to being tased to calm down, stop resisting, and sit down. To his knowledge, Kareken would only respond with profanity.

Sheriff Kehrt also testified by deposition to the following. After being informed of the tasing incident by Deputy Moberly, Sheriff Kehrt conducted an investigation, spoke with all of the deputies who were involved, and read the Use of Force Form filled out by Deputy Barkman. After completing his investigation, Sheriff Kehrt concluded that the use of the taser in this case was justified.

The Appellees subsequently filed a motion for summary judgment, and the trial court held a hearing.[1] On March 10, 2011, the trial court entered an order granting the motion and dismissed Kareken's and Layton's claims against the Appellees. This appeal followed.

STANDARD OF REVIEW

"The standard of review on appeal of a summary judgment is whether the circuit judge correctly found that there were no issues as to any material fact and that the moving party was entitled to a judgment as a matter of law." *Pearson ex rel. Trent v. Nat'l Feeding Systems, Inc.*, 90 S.W.3d 46, 49 (Ky. 2002). Summary judgment is only proper when "it would be impossible for the respondent to produce any evidence at the trial warranting a judgment in his favor." *Steelvest, Inc., v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky.

[1] We note that a copy of the hearing was not included in the record on appeal.

1991). In *Steelvest*, the word "'impossible' is used in a practical sense, not in an absolute sense." *Perkins v. Hausladen*, 828 S.W.2d 652, 654 (Ky. 1992). In ruling on a motion for summary judgment, the court is required to construe the record "in a light most favorable to the party opposing the motion . . . and all doubts are to be resolved in his favor." *Steelvest, Inc.*, 807 S.W.2d at 480. A party opposing a summary judgment motion cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must present affirmative evidence in order to defeat a properly supported motion for summary judgment. *Id.* at 481.

ANALYSIS

At the outset, we note that the Appellants concede that their claims against Deputy Swabey and Kareken's claim of vicarious liability against Mercer County were properly dismissed. Therefore, we do not address those claims.

1. 42 U.S.C. § 1983 Claim

On appeal, Kareken first argues that the trial court erred in dismissing her 42 U.S.C. § 1983 claims. As stated in *Dillingham v. Millsaps*, 809 F. Supp. 2d 820, 834 (E.D. Tenn. 2011):

> In addressing civil rights claims brought under 42 U.S.C. § 1983, courts must always begin with the following question: who did the plaintiff sue, and in what capacity? This is an important question, as it determines what the plaintiff must prove, and what defenses are available.

In the present case, Kareken sued three local government officers in their individual and official capacities: Deputy Moberly, Deputy Barkman, and Sheriff Kehrt.[2]

a. Individual Capacity

The Appellees argue that they cannot be held personally liable because they are entitled to qualified immunity. We agree.

As set forth in *Everson v. Leis*, 556 F.3d 484, 493-94 (6th Cir. 2009):

> In order to prevail on a civil rights claim under 42 U.S.C. § 1983, [the plaintiff] must establish that a person acting under the color of state law deprived him of a right secured by the Constitution or laws of the United States. [The plaintiff] must also overcome the defense of qualified immunity, which shields government officials from personal liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known . . . .
>
> The issue of qualified immunity is essentially a legal question for the court to resolve. In determining whether qualified immunity applies, [the court] employ[s] a two-part test, asking (1) whether, considering the allegations in a light most favorable to the party injured, a constitutional right has been violated, and (2) whether that right was clearly established. The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. The doctrine protects all but the plainly incompetent or those who knowingly violate the law.
>
> When, as here, a defendant raises qualified immunity as a defense, the plaintiff bears the burden of demonstrating that the defendant is not entitled to qualified immunity.

[2] As noted above, Kareken also filed suit against Deputy Swabey. However, she now concedes that all claims against Deputy Swabey were properly dismissed.

> The plaintiff has the burden of showing that a right is clearly established. However, the defendant carries the burden of showing that the challenged act was objectively reasonable in light of the law existing at the time. While the facts are normally taken as alleged by the plaintiff, facts that absolutely contradict the record will not be considered as claimed by the plaintiff.

(Citations and quotations omitted).

In this case, Kareken argues that the deputies violated her Fourth Amendment right to be free from the use of excessive force. Specifically, she argues that the deputies used excessive force when they tased her two times after she was already handcuffed and while she was having a seizure.

A claim of excessive force under the Fourth Amendment requires that a plaintiff demonstrate that she was seized and that the force used in effecting the seizure was objectively unreasonable. *Graham v. Connor*, 490 U.S. 386, 394-95, 109 S. Ct. 1865, 1871, 104 L. Ed. 2d 443 (1989). There is no dispute in this case that the deputies seized Kareken. The matter turns, then, on whether the deputies' use of force was objectively unreasonable.

> The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . . With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

> As in other Fourth Amendment contexts, however, the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.

Graham, 490 U.S. at 396-97, 109 S. Ct. 1872.

In keeping with this precedent, the Sixth Circuit has highlighted three factors of particular relevance in assessing the reasonableness of an officer's use of force: "(1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the police officers or others, and (3) whether the suspect actively resisted arrest or attempted to evade arrest by flight." *Floyd v. City of Detroit*, 518 F.3d 398, 407 (6th Cir. 2008).

It is well-settled that the gratuitous use of force on a suspect who has already been subdued and is in handcuffs is unconstitutional. *Phelps v. Coy*, 286 F.3d 295, 301-02 (6th Cir. 2002); *McDowell v. Rogers*, 863 F.2d 1302, 1307 (6th Cir. 1988). Furthermore, the Sixth Circuit has recognized that use of non-lethal force on a handcuffed suspect who no longer poses a safety threat, flight risk, or is not resisting constitutes excessive force. *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 901 (6th Cir. 2004) (concluding that using pepper spray on an individual who had stopped resisting and posed no flight risk was an unreasonable use of force); *see also McDowell*, 863 F.2d at 1307.

In this case, it is undisputed that Kareken was combative when the deputies arrived and that she struck a bystander. It is also undisputed that Kareken continued to kick, bite, and struggle after she was placed in handcuffs. However, Kareken argues that tasing her constituted excessive force because the deputies knew that she was having a seizure. In support of her argument that the deputies were aware of her seizure, Kareken points to an unsworn recorded statement from Baratta, wherein Baratta stated that she told the deputies that Kareken was having a seizure. Kareken also points to Deputy Barkman's written statement in the Use of Force Form that they "were waiting to see if [Kareken] had medical issues like a seizure . . . ."

Kareken argues that this case is similar to *Shultz v. Carlisle Police Dept.*, 706 F. Supp. 2d 613 (M.D. Pa. 2010), wherein Shultz had a seizure while visiting a McDonald's. Patrons called for emergency assistance, and a police dispatcher reported that Schultz was having a seizure or was possibly intoxicated. EMS workers tried to persuade Schultz to go to the hospital, but he got up from his chair and pushed aside a gurney. Police officers warned Schultz that he would be forced onto the gurney if he did not comply. The men wrestled, and one of the officers used his taser. EMS personnel transported Schultz to a medical center where he was treated and released. *Id*. at 616-18.

Schultz sued the department and officers under 42 U.S.C. §1983, alleging that police used excessive force in subduing him, violating his Fourth Amendment rights. *Id*. at 619. The defendants argued that their actions were reasonable

because Schultz was resisting efforts to get him to a hospital where he could receive medical treatment. The district court concluded that a jury could conclude from the surveillance video that police used excessive force in taking Schultz into custody. Although he appeared to have resisted defendants' attempts to place him on the gurney, a jury could conclude that the tape demonstrated that Schultz was not a danger to anyone and did not pose a threat to the police officers' safety. During most of the recording, Schultz sat docilely while numerous officers and other personnel spoke with him. Further, police officers appeared to have Schultz under their control at the time one of the officers used his taser repeatedly on Schultz. *Id*. at 622-24.

To the contrary, the Appellees argue that this case is more like *Everson v. Leis*, 556 F.3d 484 (6th Cir. 2009). In *Everson*, the plaintiff suffered an epileptic seizure while at a mall. This seizure required medical assistance, and plaintiff alleged that police officers "physically agitated and attacked him," and took him into custody after "hogtying" him. *Id.* at 489.

At his deposition, plaintiff testified that, at the time he had the seizure, he felt "dazed." Leaving a restroom, plaintiff was approached by several individuals in uniform. Plaintiff recalled that the officers had asked his name, and that he had asked to sit down. He then suffered a seizure. The next thing plaintiff could remember was "finding himself in hand- and foot-restraints, lying face down on a cot." Defendants testified that plaintiff had threatened to swing at mall security and emergency medical services officers. He swung at them as they approached

him. Plaintiff tried to kick a deputy who approached him, and continued to kick and fight when brought to the ground. Additionally, he pushed away a medical worker who attempted to obtain a blood-sugar reading. *Id.* at 489-90.

The Court in *Everson* concluded that the police officer who participated in subduing plaintiff was entitled to qualified immunity. *Id.* at 498. The court noted that affidavits from personnel on the scene portray plaintiff as "a vocally abusive and physically agitated person who continued to kick and fight even when personnel tried to restrain him." Plaintiff had no recollection of the incident, and testified that he "was dazed, groggy, and that he suffered 'strobe-light' sensations during this time." He thus had no evidence to rebut the defendants' statements that he "posed an immediate threat to the safety of himself and emergency personnel." Because of this lack of evidence to contradict defendants' claims that plaintiff was an immediate threat, the court concluded that the officer on the scene was entitled to qualified immunity. *Id.*

Like the plaintiff in *Everson*, Kareken cannot recall the facts of the incident. Therefore, there is no evidence to rebut the deputies' testimony that Kareken continued to resist, scream, kick, and bite after she was handcuffed; the deputies had not gained complete control over her; and she ignored Deputy Barkman's directives to stop. Furthermore, unlike in *Shultz*, there is no evidence that Kareken was calm and no longer posed a threat at the time she was tased. Because Kareken actively resisted arrest, we believe the deputies' use of the taser was objectively

reasonable under the circumstances and thus did not constitute excessive force. As such, Deputies Barkman and Moberly are entitled to qualified immunity.

Although it is unclear, it appears that Kareken also argues that the trial court erred in concluding that Sheriff Kehrt could not be held individually liable for his role in supervising the deputies. To prevail on her claim against Sheriff Kehrt in his individual capacity, Kareken must demonstrate that Sheriff Kehrt "implicitly authorized, approved or knowingly acquiesced in the unconstitutional conduct of the offending subordinate[s]." *Bennett v. City of Eastpointe*, 410 F.3d 810, 818 (6th Cir. 2005). Having concluded that the deputies did not engage in unconstitutional conduct, we need not address whether Sheriff Kehrt authorized or approved of that conduct.

b. Official Capacity

The § 1983 claims against Deputy Moberly, Deputy Barkman, and Sheriff Kehrt in their official capacities are treated as a suit against Mercer County. *See, e.g., Leach v. Shelby Cnty.,* 891 F.2d 1241, 1245-46 (6th Cir. 1989) ("[The plaintiff's] suit against the Mayor and the Sheriff of Shelby County in their official capacities is, therefore, essentially and for all purposes, a suit against the County itself."); *Petty v. Cnty. of Franklin*, 478 F.3d 341, 349 (6th Cir. 2007) ("To the extent that [the plaintiff's Section 1983] suit is against [the sheriff] in his official capacity, it is nothing more than a suit against Franklin County itself"). We note that establishing immunity for the individual deputies necessarily resolves Kareken's claims for municipal liability. *City of Los Angeles v. Heller*, 475 U.S.

796, 799, 106 S. Ct. 1571, 1573, 89 L. Ed. 2d 806 (1986) ("If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have authorized the use of unconstitutionally excessive force is quite beside the point"); *see also Spears v. Ruth*, 589 F.3d 249, 256 (6th Cir. 2009). Therefore, Kareken's municipal liability claims must also fail.

2. State Law Claims

Next, the Appellants argue that the trial court erred in granting summary judgment in favor of the Appellees as to their state law claims. We disagree.

a. Official Capacity

In their official capacities, the Appellees are entitled to absolute sovereign immunity. As set forth in *Schwindel v. Meade County*, 113 S.W.3d 159, 163 (Ky. 2003), "A county government is cloaked with sovereign immunity." In *Yanero v. Davis*, 65 S.W.3d 510, 522 (Ky. 2001), the Supreme Court of Kentucky concluded that "when an officer or employee of a governmental agency is sued in his/her representative capacity, the officer's or employee's actions are afforded the same immunity, if any, to which the agency, itself, would be entitled[.]" Accordingly, the Appellants' state law claims against the Appellees in their official capacities are barred by sovereign immunity.

b. Individual Capacity - Battery and Outrage Claims

The Appellants' state law claims of battery and outrage against the Appellees in their individual capacities are also barred because the Appellees are

entitled to qualified official immunity. As set forth in *Autry v. Western Kentucky Univ.*, 219 S.W.3d 713, 717 (Ky. 2007):

> [W]hen . . . officers or employees are sued for negligent acts in their individual capacities, they have qualified official immunity.
>
> Qualified official immunity applies to public officers or employees if their actions are discretionary (*i.e.*, involving personal deliberation, decisions and judgment) and are made in good faith and within the scope of their authority or employment. This is intended to protect governmental officers or employees from liability for good faith judgment calls in a legally uncertain environment. An act is not "discretionary" merely because some judgment is used in deciding on the means or method used. However, even if an act is discretionary, there is no immunity if it violates constitutional, statutory, or other clearly established rights, or if it is done willfully or maliciously with intent to harm, or if it is committed with a corrupt motive or in bad faith. The burden is on the plaintiff to show that the public official or employee was not acting in good faith. *Yanero*, 65 S.W.3d at 522-23.
>
> If the negligent acts of public officers or employees are ministerial, there is no immunity. An act is ministerial if the duty is absolute, certain, and imperative, involving mere execution of a specific act based on fixed and designated facts. If ministerial acts are proper, then the public officer or employee has official immunity without qualification. *Id.* at 522. Any act done by a public officer or employee who knows or should have known that his actions, even though official in nature, would violate constitutional rights or who maliciously intends to cause injury, has no immunity. *Harlow v. Fitzgerald,* 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).

In this case, the Mercer County Sheriff's Policy as to the use of a taser provided the following:

> Ta[s]ers are to only be employed as a tool to effect a lawful arrest upon a suspect or to control an out of control person who may do harm to themselves or another person[.]
>
> . . .
>
> The use of the "ta[s]er" device will fall between verbal non-compliance and the use of soft hand techniques, this will not preclude the deputy from resorting to the device to prevent injury or possible injury of the suspect or another person during an incident[.]
>
> A deputy must use sound reasonable judgement [sic] at all times in reference to the deployment of the "ta[s]er" device [.]

As set forth in the Mercer County Sheriff's Policy, the use of the taser required the "judgment" of the deputy and could be used when the individual was noncompliant to verbal commands. Further, determining the appropriate amount of force to use under the circumstances required the use of judgment and discretion. Thus, we conclude that the decision to use the taser in this case was discretionary. *See Woosley v. City of Paris*, 591 F. Supp. 2d 913, 922 (E.D. Ky. 2008) (concluding that the use of a taser was a discretionary act).

Having determined that the use of the taser was a discretionary act, we must determine whether the use of the taser by the deputies "violate[d] constitutional, statutory, or other clearly established rights, or if it [was] done willfully or maliciously with intent to harm, or if it [was] committed with a corrupt motive or in bad faith." *Autry*, 219 S.W.3d at 717. As previously noted, the deputies did not violate a "constitutional, statutory, or other clearly established right."

Furthermore, there is no evidence that the deputies acted "willfully or maliciously with intent to harm."

As set forth above, the burden is on the plaintiff to show that the public official or employee was not acting in good faith. *Yanero*, 65 S.W.3d at 522-23. In this case, the Appellees do not point to any fact to support their argument that the deputies acted maliciously or in bad faith. Because the Appellees have failed to meet their burden, we conclude that the trial court correctly concluded that the deputies were entitled to qualified official immunity as to the battery and outrage claims.

c. Individual Capacity - Negligent Supervision

Finally, we address Kareken's claim of negligent supervision against Sheriff Kehrt. Although it is unclear, it appears that Kareken contends that Sheriff Kehrt is personally liable for negligent supervision because the Mercer County Sheriff's Policy on the use of tasers that he created is unconstitutional.

We note that Kareken has failed to point to any authority that provides that Sheriff Kehrt had a ministerial duty to create a policy on the use of tasers. To the extent that there was such a duty, Kareken has failed to show how Sheriff Kehrt did not comply with that ministerial duty or negligently performed that duty. Therefore, we conclude that the creation of the tasing policy by Sheriff Kehrt was a discretionary function. *Williams v. Ky. Dept. of Educ.*, 113 S.W.3d 145, 150 (Ky. 2003) (concluding that the "[p]romulgation of rules is a discretionary function[,]" and the "enforcement of those rules is a ministerial function").

Kareken has failed to point to any evidence that Sheriff Kehrt's tasing policy violated a "constitutional, statutory, or other clearly established right." Additionally, there is no evidence that Sheriff Kehrt acted "willfully or maliciously with intent to harm." Furthermore, Kareken has not presented any evidence to show that Sheriff Kehrt created the tasing policy in bad faith. Therefore, we conclude that the trial court correctly concluded that he was entitled to qualified official immunity as to Kareken's negligent supervision claim. *See Yanero*, 65 S.W.3d at 522-23.

CONCLUSION

For the foregoing reasons, we affirm the order of the Mercer Circuit Court granting summary judgment in favor of the Appellees.

ALL CONCUR.

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