

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001479-MR

RANDY ROBINSON AND  
TERRENCE DICKINSON

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE FREDERIC COWAN, JUDGE  
ACTION NO. 09-CI-012266

OFFICER MICHAEL MEECE,  
in his individual and official  
capacity; LOUISVILLE METRO  
POLICE DEPARTMENT;  
AND UNKNOWN DEFENDANTS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; DIXON AND VANMETER, JUDGES.

VANMETER, JUDGE: Randy Robinson and Terrence Dickinson<sup>1</sup> (hereinafter collectively referred to as “Appellants”) appeal from the July 15, 2011, order of the Jefferson Circuit Court denying their motion to vacate the court’s June 3, 2010,

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<sup>1</sup> Dickinson is also referred to as Terrence Dickson in the record.

order which dismissed their complaint against Michael Meece with prejudice. For the following reasons, we affirm.

Appellants were arrested on August 28, 2006, and later indicted on charges of criminal attempt murder, assault in the first degree, possession of a handgun by a convicted felon, wanton endangerment in the first degree, and tampering with physical evidence.<sup>2</sup> Appellants pled guilty to possession of a firearm by a convicted felon and tampering with physical evidence. The charges of criminal attempt murder and assault were dismissed.<sup>3</sup>

More than three years later, on December 29, 2009, Appellants filed the underlying complaint against the arresting officer, Meece, in his individual and official capacity as an officer with the Louisville Metro Police Department (“Department”), the Department, the Louisville-Jefferson County Metro Government (“Metro Government”), and unknown defendants. In their complaint, Appellants alleged that Meece subjected them to excessive use of physical force, false imprisonment, abuse of process, and malicious prosecution, thereby depriving them of their civil rights and due process. Appellants further alleged that the Department, the Metro Government, and unknown defendants were vicariously liable for Meece’s actions.

Meece filed a motion to dismiss Appellants’ complaint for failure to state a claim upon which relief can be granted on the basis that 1) Appellants’ claims of

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<sup>2</sup> Dickinson was also charged with being a persistent felony offender in the first degree.

<sup>3</sup> Robinson also pled guilty to wanton endangerment in the first degree.

excessive use of physical force, false imprisonment, and abuse of process were barred by the statute of limitations and 2) the claim of malicious prosecution was barred by Appellants' convictions. The Department and the Metro Government also filed a motion to dismiss Appellants' complaint on the basis that sovereign immunity was afforded to them under KRS<sup>4</sup> 67C.101(2)(e).<sup>5</sup> In separate orders, the trial court dismissed Appellants' complaint against Meece and subsequently, the Department and the Metro Government. Appellants moved to vacate the trial court's order dismissing their complaint against Meece. The trial court denied their motion, from which this appeal followed.<sup>6</sup>

Upon a trial court's dismissal of a complaint under CR<sup>7</sup> 12.02(f) for failing to state a claim upon which relief can be granted, we follow the law in *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010), which set forth as follows:

A motion to dismiss for failure to state a claim upon which relief may be granted "admits as true the material facts of the complaint." So a court should not grant such a motion "unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved. . . ." Accordingly, "the pleadings should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true." This exacting standard of review eliminates any need by the trial court to make findings of fact; "rather, the question

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<sup>4</sup> Kentucky Revised Statutes.

<sup>5</sup> KRS 67C.101(2)(e) provides that consolidated local governments are accorded the same sovereign immunity granted to counties, their agencies, officers, and employees.

<sup>6</sup> We note that Appellants specifically name only Meece and the Department in the notice of appeal.

<sup>7</sup> Kentucky Rules of Civil Procedure.

is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?” Since a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law, a reviewing court owes no deference to a trial court’s determination; instead, an appellate court reviews the issue de novo.

(internal citations omitted).

Appellants argue that the trial court erred by dismissing its complaint against Meece on the basis that their asserted claims were barred by the one-year statute of limitations per KRS 413.140. Appellants contend their complaint set forth claims under the Kentucky Civil Rights Act, KRS Chapter 344, and for the tort of outrageous conduct, both of which are pursuable under the five-year statute of limitations pursuant to KRS 413.120. We disagree.

KRS 413.120 provides that actions arising from either “a liability created by statute, when no other time is fixed by the statute creating the liability[.]” or “an injury to the rights of the plaintiff, not arising on contract and not otherwise enumerated[.]” shall be commenced “within five (5) years after the cause of action accrued.” KRS 413.120(2) and (7). KRS 413.120 has been held applicable to claims pursued under KRS Chapter 344 and claims of outrageous conduct. *See Clifton v. Midway College*, 702 S.W.2d 835, 837 (Ky. 1985) (holding that KRS 413.120(2) is the proper limitations statute to be applied in civil rights actions); *Craft v. Rice*, 671 S.W.2d 247, 251 (Ky. 1984) (holding that the five-year statute of

limitations applies to the tort of outrageous conduct because the tort involves the intentional interference with the right to be free from emotional distress).

The Kentucky Civil Rights Act, KRS Chapter 344, *et seq.*, seeks “[t]o safeguard all individuals within the state from discrimination because of familial status, race, color, religion, national origin, sex, age forty (40) and over, or because of the person’s status as a qualified individual with a disability[.]” KRS 344.020(1)(b). The purpose of the Act is to protect those individuals’ “interest in personal dignity and freedom from humiliation[.]” *Id.* In the present case, Appellants generally alleged that Meece’s actions caused them humiliation; however, no facts in the pleadings provide a basis for a civil rights action. Appellants neither set forth facts establishing themselves as protected individuals under the Act, nor alleged any form of discrimination. Our independent review of the Kentucky Civil Rights Act does not reveal any right of action available to the Appellants under the facts pled in the complaint. *Cf.* KRS 344.040 – 110 (regulating discrimination in employment practices); KRS 344.120 (regulating discrimination in renting and selling public accommodations); KRS 344.140 (regulation of advertisement of goods, services, and accommodations); and KRS 344.145 (regulation of denial, due to sex, of equal enjoyment of facilities supported by government funds). Accordingly, even assuming the facts alleged to be true, the complaint does not allege a right of action under the Kentucky Civil Rights Act.

Turning our attention to Appellants' argument that the facts support a claim of outrageous conduct, Meece argues the tort of outrage could not lie under the holding in *Rigazio v. Archdiocese of Louisville*, 853 S.W.2d 295 (Ky. App. 1993).

In *Rigazio*, this court held that,

where an actor's conduct amounts to the commission of one of the traditional torts such as assault, battery, or negligence for which recovery for emotional distress is allowed, and the conduct was not intended only to cause extreme emotional distress in the victim, the tort of outrage will not lie.

*Id.* at 299. This court noted the historical role of the tort of outrage, referring to it as a "gap-filler" that provides "redress for extreme emotional distress in those instances in which the traditional common law actions did not[.]" *Id.* at 298-99.

Such a conclusion was based on Kentucky's adoption of the *Restatement (Second) of Torts* (1965) § 46, Comment a., which explains:

[The tort of outrage] creates liability only where the actor intends to invade the interest in freedom from severe emotional distress. The fact that the actor intends to invade some other legally protected interest is insufficient to create liability where the only effect of his act is the creation of emotional distress[.]

*Rigazio*, 853 S.W.2d at 298. *See also Craft*, 671 S.W.2d at 251 (adopting the *Restatement* definition of outrageous conduct causing severe emotional distress).

In the case at hand, Appellants did not allege that Meece intended to invade their right to freedom from emotional distress. Rather, the facts pled allege that the emotional distress stemmed from the assault, false imprisonment, and malicious

prosecution. As a result, the complaint did not support an independent action for outrageous conduct.

Simply put, Appellants only pled facts to support varying common law torts such as assault, false imprisonment, and malicious prosecution. Thus, the only claims upon which relief could be granted were each time-barred by the one-year statute of limitations provided for in KRS 413.140. If Meece is not liable, it follows that the Department is not vicariously liable for his actions. *See Patterson v. Blair*, 172 S.W.3d 361, 364 (Ky. 2005) (holding that an employer is only liable for damages resulting from torts committed by employees). Accordingly, the trial court did not err by dismissing Appellants' complaint with prejudice.<sup>8</sup>

The July 15, 2011, order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Henry K. Curtis  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Lisa A. Schweickart  
Louisville, Kentucky

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<sup>8</sup> Appellants also set forth the argument that Officer Meece was not entitled to sovereign immunity in his individual capacity. Seeing as the issue of Meece's immunity was not before the trial court, and thus not the basis of its dismissal of Appellants' complaint, we decline to address this point of error.