

RENDERED: MARCH 1, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000154-MR

EDDIE YATES

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE DAN KELLY, JUDGE
ACTION NO. 10-CI-00307

RICK BENNINGFIELD,
INDIVIDUALLY AND IN HIS OFFICIAL
CAPACITY AS JAILER, TAYLOR
COUNTY, KENTUCKY; EDDIE
ROGERS, IN HIS OFFICIAL
CAPACITY AS JUDGE
EXECUTIVE, TAYLOR COUNTY,
KENTUCKY; AND TAYLOR
COUNTY, KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MAZE, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Eddie Yates brings this appeal from a December 1, 2011, summary judgment of the Taylor Circuit Court dismissing Yates's claims against Rick Benningfield, individually and in his official capacity as Jailer, Taylor County, Kentucky; Eddie Rogers, in his official capacity as Judge Executive, Taylor County, Kentucky; and Taylor County, Kentucky (hereinafter collectively referred to as appellees) upon the basis of immunity. We affirm.

Yates was an inmate at the Taylor County Regional Jail. While so incarcerated, Yates fell and suffered an injury to his hand on July 24, 2009. The next day, on July 25, the record indicates that a nurse examined Yates's hand, ordered 800 mg of ibuprofen to be taken twice daily, and scheduled an x-ray. Three days later, on July 27, an x-ray revealed that Yates suffered an acute oblique fracture of the fourth metacarpal of his hand. Thereafter, Yates was released from the Taylor County Jail on July 30 and was informed of a scheduled appointment with orthopedics at Taylor Regional Hospital.

Subsequently, Yates filed a complaint against Rick Benningfield, individually and in his official capacity as Jailer, Taylor County, Kentucky; Eddie Rogers, in his official capacity as Judge Executive, Taylor County, Kentucky; and Taylor County, Kentucky. Therein, Yates claimed that he did not receive proper medical care for his broken hand while incarcerated at Taylor County Jail. In particular Yates alleged:

7. At all times material hereto, Defendant Jailer failed to enact or promulgate sufficient policies or procedures or employed a custom of violating his own

policies and procedures, and failed to properly equip, staff, hire, train, re-train and supervise competent administrators, officers and health care providers, whose job it was to confine, segregate, supervise and care for, and provide medical services to, pretrial detainees generally, and Rick Benningfield specifically, resulting in the conduct described below.

8. At all times hereto, Defendants County, County Judge Executive and Jailer were under a duty to provide health care services to detainees housed in the jail facility. Furthermore, at all times material hereto, said Defendants assumed responsibility for the health, safety, well-being, supervision and care of and provision of medical services to, pretrial detainees generally, and Eddie Yates specifically, at the jail facility.

.....

11. That at all times pertinent hereto, the Defendant was put on actual notice by the Plaintiff of his injury. Plaintiff's injury was extremely painful, and the Plaintiff was in need of emergency medical treatment.

12. In spite of the aforesaid notice, the Defendant ignored such notice and intentionally neglected the medical care required by the Plaintiff and such neglect and actions were ministerial as opposed to discretionary.

.....

17. That the Defendant, at all times pertinent hereto, had a legal obligation to provide the Plaintiff with adequate medical care which it neglected and refused to provide.

Appellees filed a motion for summary judgment. They sought dismissal of all claims upon the bases of qualified official immunity and of sovereign immunity.

By summary judgment entered December 1, 2011, the circuit court granted

appellees' motion and dismissed the complaint in its entirety.¹ This appeal follows.

Yates claims that the circuit court erred by dismissing his claims based upon sovereign immunity and qualified official immunity. For the following reasons, we believe the circuit court properly rendered summary judgment dismissing all claims against appellees.

Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). Generally, the issue of immunity presents a question of law; however, in this Commonwealth, the narrow issue of whether the public official acted in good faith so as to be entitled to qualified official immunity may present a factual question for the jury. *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2011). To resolve this appeal, it is necessary to address appellees' entitlement to sovereign immunity and qualified official immunity.

SOVEREIGN IMMUNITY

In this Commonwealth, it is well-settled that some counties predated the existence of the State and that all counties are viewed as political subdivisions of the State entitled to the shield of sovereign immunity. *Comair, Inc. v.*

¹ In the December 1, 2011, summary judgment, the circuit court failed to include conclusions of law or any legal reasoning. Rather, the circuit court simply recited that it granted appellees' motion for summary judgment. Although some written reasoning is preferred, there is no legal duty upon the circuit court to provide same in a summary judgment. *Wilson v. Southward Inv. Co. No. 1*, 675 S.W.2d 10 (Ky. App. 1984).

Lexington-Fayette Urban County Airport Corp., 295 S.W.3d 91 (Ky. 2009).

Sovereign immunity or governmental immunity may also be available to shield a public official when sued in his or her official capacity. *Hamblen ex rel. Byars v. Ky. Cabinet For Health & Family Servs.*, 322 S.W.3d 511 (Ky. 2010). A public official named in his official capacity is entitled to the same immunity as enjoyed by the pertinent governmental entity. *Id.* Such immunity is extended to a public official because an action against an official in his official capacity is essentially an action against the governmental entity the official represents. *Yanero*, 65 S.W.3d 510.

In his complaint, Yates named Rick Benningfield in his official capacity as Jailer and Eddie Rogers in his official capacity as Judge Executive; Yates also named Taylor County. It is clear that Taylor County is cloaked with sovereign immunity, thus mandating dismissal of all claims against the county. As to Benningfield and Rogers in their respective official capacities, the jailer and judge executive are elected officers of the county and claims against a jailer and judge executive in their official capacities are essentially claims against the county. *Commonwealth v. Harris*, 59 S.W.3d 896 (Ky. 2001)(holding that claims against a jailer in his official capacity are tantamount to claims against the county). So, Benningfield and Rogers in their respective official capacities are also entitled to sovereign immunity. Accordingly, we conclude that all claims against Taylor County, Benningfield, in his official capacity, and Rogers, in his official capacity, are barred by the doctrine of sovereign immunity.

QUALIFIED OFFICIAL IMMUNITY

In his complaint, Yates also named Benningfield in his individual capacity.² A public official sued in his individual capacity may be entitled to claim qualified official immunity. To be entitled to the shield of qualified official immunity, the public official must be performing a discretionary act as opposed to a ministerial act. A ministerial act is generally “one that requires 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.” *Yanero*, 65 S.W.3d at 522. Conversely, a discretionary act is one “involving the exercise of discretion and judgment, or personal deliberation, decision, and judgment.” *Id.* There is no qualified official immunity for the performance of a ministerial act. And, qualified official immunity is applicable to an act by a public official that is: (1) discretionary, (2) made in good faith, and (3) within the scope of the official’s authority. *Id.*

In his brief, Yates particularly argues that Benningfield, as Taylor County Jailer, possessed the statutory duty (Kentucky Revised Statutes [KRS] 71.020) to provide for the custody and care of all inmates in the Taylor County Jail. Yates maintains that such duty includes the providing of medical care to inmates.³ Yates claims that Benningfield hired a third party (Southern Health

² Eddie Yates did not name Eddie Rogers in his individual capacity.

³ The duty of a jailer to provide for the custody and care of an inmate is a duty created by statutory law. KRS 71.040. And, the concomitant duty of a county jail to provide for the “necessary medical, dental, and psychological care” of indigent inmates is, likewise, created by statutory law. KRS 441.045(3).

Partners) to provide all medical services to inmates of the Taylor County Jail and that Southern Health Partners did not possess “suitable skill to protect the health and medical needs of inmates.” Yates’s Brief at 9. Essentially, Yates is arguing that Benningfield negligently hired and/or supervised Southern Health Partners, thereby breaching his duty to provide for the care of inmates at the Taylor County Jail.

Our Supreme Court has recognized that a public officer, like Benningfield, may “be subject to personal [individual] liability . . . for hiring an employee known to that officer to be incompetent to perform the task for which he/she was hired.” *Yanero*, 65 S.W.3d at 528.⁴ Stated differently, the hiring of a known incompetent individual without reasonable skill to perform the subject task constitutes breach of a ministerial duty by the public officer. *Id.*

In this case, Yates failed to raise any issues or identify any facts that would support an allegation that Benningfield knew Southern Health Partners did not possess the suitable skills to provide medical care to the inmates at the time Southern Health Providers was hired/contracted with to provide such services. Consequently, the circuit court properly rendered summary judgment dismissing Yates’s claims against Benningfield in his individual capacity.

To conclude, we are of the opinion that the circuit court properly rendered summary judgment dismissing Yates’s complaint against appellees.

⁴ A public officer may not be held vicariously liable for the negligent acts of subordinates. *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2011).

For the foregoing reasons, the summary judgment of the Taylor
Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Robert L. Bertram
Jamestown, Kentucky

BRIEF FOR APPELLEES:

R. Keith Bond
Eric A. Hamilton
Elizabethtown, Kentucky