RENDERED: MAY 15, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000208-MR

JASON STEARMAN — APPELLANT

v.

APPEAL FROM METCALFE CIRCUIT COURT
HONORABLE PHILLIP T. PATTON, JUDGE
ACTION NO. 07-CI-00053

WILLIAM KNIGHT, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY;
AND LARRY MEHAFFEY — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, MAZE, AND NICKELL, JUDGES.

NICKELL, JUDGE: Jason Stearman has appealed from the Metcalfe Circuit Court's January 10, 2013, order granting summary judgment in favor of Larry Mehaffey and William Knight, individually and in his official capacity as the Adair

County Regional Correctional Center ("ACRCC") Jailer. Following a careful review, we affirm.

The historical facts of this case were set out in a previous Opinion of this Court dismissing an appeal from an interlocutory order. In the interest of judicial economy, we repeat them here.

> In 2006, [Stearman] participated in a Class D felon community-related work release program while he was in the custody of ACRCC. On several occasions Stearman was released to perform work at a small dog rescue facility owned by [Mehaffey] and his wife. Apparently, Mahaffey,[1] a state highway employee, frequently signed out inmates to work on highway department projects and at the dog rescue facility. On July 1, 2006, Stearman sustained injuries to his head and arm while on Mahaffey's premises. Stearman claimed he was injured while using a chainsaw to cut down a tree. However, Mahaffey contended that the injuries were the result of Stearman's unauthorized use of an ATV.
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> In April 2007, Stearman filed a personal injury action in the Metcalfe Circuit Court against Adair County, William Knight, individually and in his official capacity as the ACRCC Jailer, and Mahaffey. Stearman claimed various violations of the Kentucky Department of Corrections policy and procedures for use of Class D felons in community-related service programs. Specifically, Stearman alleged that ACRCC and Knight wrongfully released him to work at Mahaffey's private business that did not meet the criteria required for a work release program. Further, Stearman alleged that ACRCC failed to inspect the premises where he was sent to work and failed to properly train Mahaffey as a work supervisor.

[1] We note the prior Opinion referenced Mehaffey as "Mahaffey." No explanation is readily apparent as to the different spellings. Because the notice of appeal, the trial court and the parties use the spelling Mehaffey in this appeal, we shall do so in this Opinion.

During the course of depositions, numerous questions arose as to whether the dog rescue facility was, in fact, a nonprofit organization; whether Knight or the Class D supervisor at ACRCC confirmed that Mahaffey was authorized to take inmates to said facility; and, whether Mahaffey properly supervised inmates while on site. Further allegations arose concerning whether Stearman had been provided alcohol or had visited with his fiancée while working at the facility.

Following discovery, all parties filed motions for summary judgment. Pertinent to this appeal, the County, Knight and Mahaffey claimed that sovereign immunity and qualified immunity barred Stearman's action. A hearing was held on September 14, 2010, after which the trial court entered an order denying all motions, stating only that there were "multiple issues of genuine fact." This appeal ensued.

Citing *Rowan County v. Sloas*, 201 S.W.3d 469 (Ky. 2006), [the County and Knight] argue that because ACRCC is a county entity, it was entitled to sovereign immunity and that Jailer Knight was entitled to qualified official immunity. Further, [the County and Knight] contend that the trial court's denial of their motion for summary judgment on those grounds is reviewable pursuant to *Breathitt County Bd. of Educ. v. Prater*, 292 S.W.3d 883, 887 (Ky. 2009), wherein our Supreme Court held:

> As we observed recently in *Rowan County v. Sloas*, 201 S.W.3d 469 (Ky. 2006), immunity entitles its possessor to be free "from the burdens of defending the action, not merely . . . from liability." *Id.* at 474 . . . . Obviously such an entitlement cannot be vindicated following a final judgment for by then the party claiming immunity has already borne the costs and burdens of defending the action. For this reason, the United States Supreme Court has recognized in immunity cases an exception to the federal final judgment rule codified at 28

> U.S.C. § 1291. In *Mitchell v. Forsyth,* 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985), the Court reiterated its position that "the denial of a substantial claim of absolute immunity is an order appealable before final judgment." *Id.* at 525, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411, *citing Nixon v. Fitzgerald,* 457 U.S. 731, 102 S.Ct. 2690, 73 L.Ed.2d 349 (1982). We find the Supreme Court's reasoning persuasive, and thus agree with the Court of Appeals that an order denying a substantial claim of absolute immunity is immediately appealable even in the absence of a final judgment.
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> Unlike the instant case, however, the trial court in *Prater* had expressly determined the issue of immunity. *Id*. at 885. Herein, the trial court made no such ruling with regard to immunity.

Adair County v. Stearman, 2010-CA-001953-MR, 2011 WL 4103137, at *1-2 (Ky. App. Sept. 16, 2011). Concluding no determination on immunity had been rendered, the panel dismissed the appeal. After discretionary review of that ruling was denied by the Supreme Court of Kentucky, the matter proceeded in the trial court.

On November 16, 2012, the County and Knight renewed their motions for summary judgment on immunity grounds. Mehaffey joined in the motion. During a hearing on the motions, Stearman conceded the County was entitled to sovereign immunity. After hearing oral arguments, the trial court granted the motions, first noting Stearman had agreed the County was entitled to sovereign immunity and judgment in its favor was warranted. Citing *Sloas* and *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2001), the trial court concluded Knight was entitled to

official immunity in his official capacity, and qualified official immunity in his individual capacity; Mehaffey—as a conceded agent of ACRCC for purposes of supervising inmates on the Class D work-release program—was entitled to qualified official immunity. These conclusions were based on the trial court's determination that the acts complained of were discretionary, not ministerial, and further, were bolstered by Stearman's failure to prove any bad faith on the part of Knight or Mehaffey. This appeal followed.[2]

Stearman contends the trial court erred in concluding Knight and Mehaffey were entitled to qualified official immunity. He alleges administration of the ACRCC Class D felon work-release program and supervision of the participating inmates are ministerial functions, not discretionary functions, as the trial court found. Alternatively, he contends Knight and Mehaffey acted in bad faith. Either finding, he argues, would remove the protective cloak of immunity, and subject Knight and Mehaffey to liability for their alleged negligence. Stearman insists the trial court erred in not so finding and in granting summary judgment. We disagree.

Summary judgment is a device utilized by courts to expedite litigation. *Ross v. Powell,* 206 S.W.3d 327, 330 (Ky. 2006). It is deemed a "delicate matter" because it "takes the case away from the trier of fact before the

[2] Although no appeal has been taken from the grant of summary judgment in favor of the County and no arguments advanced regarding the propriety of the ruling, we include reference to the decision for completeness but this Opinion will contain no further discussion regarding the County.

evidence is actually heard." *Steelvest, Inc. v. Scansteel Service Center, Inc.,* 807 S.W.2d 476, 482 (Ky. 1991). In Kentucky, the movant must prove no genuine issue of material fact exists, and he "should not succeed unless his right to judgment is shown with such clarity that there is no room left for controversy." *Id.* The trial court must view the evidence in favor of the non-moving party. *City of Florence v. Chipman,* 38 S.W.3d 387, 390 (Ky. 2001). The non-moving party must present "at least some affirmative evidence showing the existence of a genuine issue of material fact[.]" *Id*.

On appeal, our standard of review is "whether the trial court correctly found that there 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. 1996). Because summary judgments do not involve fact-finding, our review is *de novo*. *Pinkston v. Audubon Area Community Services, Inc.*, 210 S.W.3d 188, 189 (Ky. App. 2006). Furthermore, the question of immunity is a matter of law which we review *de novo*. *Sloas*, 201 S.W.3d at 475; *Estate of Clark ex rel. Mitchell v. Daviess County*, 105 S.W.3d 841, 844 (Ky. App. 2003). Pertinent to this appeal,

> [u]nder *Yanero*, public officers and employees are entitled to "qualified official immunity" for negligent conduct when the negligent act or omissions were (1) discretionary acts or functions, that (2) were made in good faith (*i.e.* were not made in "bad faith"), and (3) were within the scope of the employee's authority. *Yanero*, 65 S.W.3d at 522. Conversely, no immunity is afforded for the negligent performance or omissions of a ministerial act, or if the officer or employee willfully or

> maliciously intended to harm the plaintiff or acted with a corrupt motive, *i.e.*, again the "bad faith" element. *Id.* at 523. And, "[o]nce the officer or employee has shown *prima facie* that the act was performed within the scope of his/her discretionary authority, the burden shifts to the plaintiff to establish by direct or circumstantial evidence that the discretionary act [was in bad faith]." *Id*.

Sloas, 201 S.W.3d at 475-76. With these standards in mind, we turn to the allegations of error presented.

We are first called upon to determine whether the allegedly negligent acts or omissions of Knight and Mehaffey were discretionary or ministerial in nature. As the trial court correctly found, we hold *Sloas* is controlling.

In that case, Sloas was an inmate in the Rowan County Jail who participated in the jail's "Class D Work Program." He was injured while working on a crew clearing brush and trees with chain saws. Sloas sued the county, the jailer and a deputy jailer assigned to act as supervisor for the crew, alleging negligent supervision and training of staff and prisoners and failure to promulgate and implement adequate safety procedures. The trial court granted summary judgment in favor of the county on sovereign immunity grounds, the jailer and deputy jailer in their official capacities on absolute official immunity grounds, and on qualified official immunity in their individual capacities. This Court affirmed the summary judgments in favor of the county and in favor of the jailer and deputy jailer in their official capacities, but reversed the summary judgments against the jailer and deputy jailer in their individual capacities upon finding genuine issues of material fact regarding whether their acts or omissions amounted to "bad faith."

On discretionary review, the Supreme Court of Kentucky concluded the trial court was correct to grant summary judgment on all claims to all of the defendants and reversed that portion of this Court's decision to the contrary.

In discussing whether the acts of the jailer and deputy jailer supervising the work crew were discretionary or ministerial, the *Sloas* Court stated:

> One man, Henderson, a nine year deputy jailer, is in charge of this *crew*. He has to watch them, and try as best he can to anticipate what they might do, correct them as necessary, determine their capabilities, sometimes by asking them forthright whether they can or can't do the job, assign the duties and see that the work is performed. Work somewhat similar to work one would do around his house or farm, in cleaning brush or trees off a bank or out of a field. Work done this day with chainsaws. Chainsaws that you can buy in any hardware store, which many people operate and many of which have had "kickbacks." *One would imagine there are many other things you might think about while managing a work crew of six state prisoners,* but what has been set out is enough. It is as discretionary a task as one could envision. No school children, no college professors or academicians, but state prisoners on a highway with one deputy jailer.
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> . . . .
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> As to the stricture in [Kentucky Revised Statutes (KRS)] 441.125(2)(6) (sic), that "no prisoner shall be assigned to unduly hazardous work that would endanger the life or health of the prisoner or others," suffice it to say, that everyday people—every day—use chainsaws cutting brush and trees, including prisoners. Dangerous it can be, but "unduly dangerous," it is not.

Id. at 480 (emphasis in original). Stearman attempts mightily to distinguish the instant case from *Sloas* so as to avoid its application. However, those very minor

factual distinctions advanced are unpersuasive. It is difficult to imagine a case more on point with the facts presented. In a strikingly similar factual scenario, our Supreme Court has undeniably concluded the supervision of inmates using chainsaws while on a work-release crew does not amount to a violation of KRS 411.125 (2)(b) and "is as discretionary a task as one can envision." We are bound to follow Kentucky Supreme Court precedents. SCR 1.030(8)(a). Thus, we must affirm the trial court's application of this binding precedent in concluding Knight and Mehaffey were performing discretionary functions at the time Stearman was injured.

Having concluded the acts faulted were discretionary, we must now determine whether Stearman produced sufficient evidence to establish Knight and Mehaffey acted in bad faith which would preclude their entitlement to immunity. Based on the evidence presented, we conclude Stearman did not carry his burden.

> [B]ad faith "can be predicated on a violation of a constitutional, statutory, or other clearly established right which a person in the public employee's position presumptively would have known was afforded a person in the plaintiff's position, i.e., objective unreasonableness." [*Yanero*, 65 S.W.3d at 523.] Acting in the face of such knowledge makes the action objectively unreasonable. Or, bad faith can be predicated on whether the public employee "willfully or maliciously intended to harm the plaintiff or acted with a corrupt motive," *id*., which requires a subjective analysis.

Bryant v. Pulaski County Detention Center, 330 S.W.3d 461, 466 (Ky. 2011) (internal citations omitted).

In the instant matter, Stearman alleges no willful, malicious or sinister motive by Knight or Mehaffey. Rather, he contends they negligently and carelessly violated the requirements and duties imposed on them by KRS 411.125, various Department of Corrections policies and procedures, and the supervision requirements adopted by ACRCC. He asserts the awareness and negligent breach of these requirements amounted to bad faith and exposed Stearman to an unreasonable risk of harm from unduly dangerous work. Stripped of its verbiage, Stearman's argument is essentially that Knight and Mehaffey negligently breached their statutory duties, and such negligence constitutes *per se* bad faith. That is not the law.

> Bad faith is "[t]he opposite of 'good faith,' and it is *not prompted by an honest mistake* as to one's rights or duties, but by some interested or sinister motive." *Black's Law Dictionary* 176 (rev. 4th ed. 1968) (emphasis added). Thus, if the facts of the violation are not such as to demonstrate or support a finding of "bad faith" on the part of the officer or employee in performing a discretionary function, then the alleged violations of the right involved is (sic) irrelevant to "qualified official immunity" issues.

Sloas, 201 S.W.3d at 483-84. There is no showing in the record before us of "bad faith" on the part of Knight or Mehaffey towards Stearman. "There must be some implication of self-interest, or a deliberate indifference, or sinister motive, rather than an honest mistake or oversight. Under these circumstances, there were none." *Id*. at 485.

This litigation has spanned over six years and is now on its second journey through the appellate process. The questions of immunity and bad faith have been at issue for the vast majority of that time. This is not a case where the trial court prematurely cut off a litigant's rights without permitting sufficient time to develop a factual record or conduct sufficient discovery as evidenced by the size of the record on appeal. Nevertheless, Stearman has plainly failed to introduce any direct or circumstantial evidence that the discretionary acts complained of were done in bad faith. His legal arguments simply do not overcome the evidentiary shortcomings. In the absence of a showing of bad faith, Knight and Mehaffey were entitled to the cloak of qualified official immunity for their alleged negligence in the performance of their discretionary functions. The trial court was correct in its assessment on this matter.

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

ALL CONCUR.

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