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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-000556-MR

TRANSIT AUTHORITY OF RIVER CITY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE FREDERIC COWAN, JUDGE
ACTION NO. 10-CI-006849

JONATHAN L. TAYLOR; WILLIAM CHISM,
AS ADMINISTRATOR AND ON BEHALF OF
THE ESTATE OF DIANA CHISM; AND
WILLIAM CHISM AS GUARDIAN, NEXT
FRIEND AND ON BEHALF OF M.T.C., A
MINOR, M.I.C., A MINOR, AND C.D.C.,
A MINOR

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON, COMBS, AND VANMETER, JUDGES.

VANMETER, JUDGE: Transit Authority of River City (“TARC”) appeals from
the February 26, 2013, order of the Jefferson Circuit Court which granted in part

and denied in part TARC's motion for summary judgment. The trial court denied TARC's motion for summary judgment based on quasi-governmental immunity, and granted TARC's motion for partial summary judgment on the issue of punitive damages. TARC now appeals from the portion of the court's order denying it immunity. For the following reasons, we affirm.

On September 15, 2010, Elbert Bledsaw was operating a TARC bus when he struck a motorcycle being driven by Jonathon Taylor. As a result of the collision, Taylor suffered permanent bodily injuries and his passenger, Diana Chism, was killed. On October 5, 2010, Taylor filed a complaint against TARC and Bledsaw seeking compensatory and punitive damages. Taylor claimed TARC was vicariously responsible for the negligent actions of Bledsaw, and also responsible for its negligent hiring, training, supervising, and retention of Bledsaw. TARC moved for summary judgment, arguing the negligent hiring, training, supervising, and retention claims were barred by immunity. The trial court denied its motion, finding that TARC performs a proprietary, rather than an essential governmental function and thus is not entitled to governmental immunity. TARC now appeals.

A party moving for summary judgment must establish that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996); CR¹ 56.03. Typically, an order denying a motion for summary judgment is interlocutory and

¹ Kentucky Rules of Civil Procedure.

therefore not appealable. *Battoe v. Beyer*, 285 S.W.2d 172 (Ky. 1955). Yet, an order denying a motion for summary judgment based on a claim of sovereign immunity is immediately appealable. *Breathitt County Bd. of Educ. v. Prater*, 292 S.W.3d 883, 886-87 (Ky. 2009). Whether a defendant is entitled to immunity is a question of law subject to *de novo* review. *Rowan County v. Sloas*, 201 S.W.3d 469, 475 (Ky. 2006).

Kentucky law distinguishes between sovereign immunity and governmental immunity and, in turn, draws a distinction between the protections afforded the state and county governments and those afforded governmental agencies or entities. The Commonwealth and Kentucky counties enjoy sovereign (absolute) immunity from suit, absent consent or waiver. *Comair, Inc. v. Lexington-Fayette Urban County Airport Corp.*, 295 S.W.3d 91, 94 (Ky. 2009). “[P]erhaps the most succinct explanation accounting for the concept is that ‘it is not a tort for government to govern’” *Id.* (citation omitted). A merged urban-county government, such as Louisville Metro, is a classification of county government that likewise is afforded sovereign immunity. *Lexington-Fayette Urban County Gov’t v. Smolcic*, 142 S.W.3d 128, 132 (Ky. 2004).

Governmental immunity is a derivative of sovereign immunity and is granted to qualified governmental agencies or entities. *Comair*, 295 S.W.3d at 94. In order to qualify for governmental immunity, an entity must meet two conditions. *Id.* at 99. First, the entity must have been established by an immune entity. *Id.*

This inquiry recognizes that, to some extent, an entity's immunity status depends on the immunity status of the parent entity. *Id.*

Second, and more importantly, the entity must exercise a governmental function, *i.e.*, a “function integral to state government.” *Id.* The rationale for this showing is that sovereign immunity “should extend . . . to departments, boards or agencies that are such integral parts of state government as to come within regular patterns of administrative organization and structure.” *Id.* (citation omitted). Examples of state level governmental concerns include police, public education, corrections, tax collection, and public highways. *Id.* at 99. Entities performing proprietary functions and/or addressing purely local concerns do not qualify for the protections of governmental immunity. *Id.* at 99-100.

In this case, the parties do not dispute that TARC has satisfied the first showing. Thus, the sole issue is whether TARC providing mass transportation services constitutes a proprietary function serving the local Louisville Metro area, as the trial court found, or a governmental function. Recently, this Court addressed this very issue in *Transit Authority of River City v. Bibelhauser*, 432 S.W.3d. 171 (Ky. App. 2013), *disc. review denied*, 2013-SC-746 (Ky. 2014), and held that TARC provides services that are purely local and proprietary in nature, does not carry out functions integral to state government, and therefore is not entitled to governmental immunity. *Id.* Because the issue at bar has already been resolved in *Bibelhauser*, further analysis is not required. Accordingly, we affirm the trial court's order denying TARC's motion for summary judgment.

For the foregoing reasons, the February 26, 2013, order of the

Jefferson Circuit Court is affirmed.

ALL CONCUR.

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