

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000603-MR

THERESA GERSTLE

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 13-CI-004432

TEHMINA KHAN, M.D.; and CENTRAL
STATE HOSPITAL CANTEEN, INC.

APPELLEES

OPINION
AFFIRMING IN PART,
DISMISSING IN PART, AND REMANDING

** ** *

BEFORE: ACREE CHIEF JUDGE; COMBS AND MAZE, JUDGES.

COMBS, JUDGE: Theresa Gerstle appeals from two orders of summary judgment of the Jefferson Circuit Court that dismissed her action against Central State Hospital and Dr. Tehmina Khan. With respect to Central State Hospital, the appeal was prematurely filed because of a pending motion upon which the Court had not ruled. Thus, the appeal must be dismissed and this case be remanded to allow for a

ruling on a pending motion. However, as to the summary judgment entered in favor of Dr. Khan, we affirm.

Pursuant to the provisions of Kentucky Revised Statutes (KRS) Chapter 202A, a verified petition for involuntary hospitalization was filed against Theresa Gerstle on September 20, 2012. The petition was filed by Jennifer Moody, a nurse at Louisville Metro Department of Corrections. The petition alleged that Gerstle was experiencing auditory and visual hallucinations that were resulting in self-harm. An examination order and examination certificates were duly issued by the Jefferson District Court. Following an emergency psychiatric evaluation at the University Of Louisville Hospital, Gerstle was ordered admitted to Central State Hospital, a state-run psychiatric facility, for further evaluation and certification.

Following a preliminary hearing held in Jefferson District Court on October 3, 2012, the district court found probable cause to proceed with a commitment hearing. A final hearing was conducted on October 9, 2012, and Gerstle was committed to Central State for a period not to exceed 60 days.

Throughout her hospitalization at Central State, Gerstle was evaluated, diagnosed, and treated by Dr. Tehmina Khan, a staff physician. On November 2, 2012, Dr. Khan determined that Gerstle no longer met the requirements for involuntary commitment. She was discharged from the hospital.

On September 4, 2013, Gerstle, *pro se*, filed a complaint in Jefferson Circuit Court against Dr. Khan and Central State Hospital. She alleged that Dr.

Khan and Central State: wrongfully held her without a diagnosis that justified her commitment; abused and assaulted her, causing bodily injury; and committed medical malpractice.

On September 12, 2013, Dr. Khan answered the complaint and denied the allegations against her. Dr. Khan also asserted that she was protected from liability by the principles of qualified official immunity.

On September 30, 2013, Central State filed (under seal) a motion for summary judgment. The hospital contended that it was entitled to summary judgment on the basis of governmental immunity and insufficient service of process. On November 15, 2013, the Jefferson Circuit Court granted the hospital's motion. Ten days later, Gerstle filed a motion to reconsider, presumably pursuant to Kentucky Rule[s] of Civil Procedure (CR) 59.05. However, no order addressing or disposing of that motion appears in the record.

On January 14, 2014, Dr. Khan filed a motion -- also under seal -- for summary judgment. Dr. Khan contended that she was immune from personal liability pursuant to the provisions of KRS 202A.301 that protect her professional opinion and duties under the circumstances of this case. Dr. Khan argued that she was entitled to qualified official immunity. She also contended that the action was barred by *res judicata* since the Jefferson District Court had determined in a prior proceeding that Gerstle was subject to an involuntary commitment. On March 6, 2014, the Jefferson Circuit Court granted the motion for summary judgment based upon each of Dr. Khan's assertions. The court's order was made final and

appealable by recitation of the necessary language. CR 54.02(1). Gerstle then filed this appeal of the orders dismissing her action in its entirety.

On appeal, Gerstle first contends that this case -- at least insofar as it pertains to Central State -- should be remanded to the circuit court for disposition of the outstanding motion. We agree.

On November 25, 2013, Gerstle filed a timely motion to reconsider the summary judgment order that had been entered in favor of Central State Hospital on November 15, 2013. A timely motion filed pursuant to CR 59.05 serves to stay the running of time for an appeal. CR 73.02(e). Therefore, Gerstle's time for filing a notice of appeal was stayed pending the entry of a ruling by the circuit court on her motion to reconsider. However, the record does not reflect that the circuit court ever ruled on the motion. Since the circuit court did not dispose of the motion before the notice of appeal was filed, we hold that the appeal from the summary judgment entered in favor of Central State was filed prematurely. It must be dismissed and remanded to allow the trial court to rule on the pending motion to reconsider.

With respect to the summary judgment entered in favor of Dr. Khan, Gerstle contends that the trial court erred by concluding that Dr. Kahn was entitled to immunity with respect to the care that she provided to Gerstle. Gerstle argued that Dr. Kahn mishandled her discharge, asserting that she should not have been "released to the street, to a dangerous state of homelessness, when she had a home that could have been available for her" if she had never been committed. (Brief at

3). The record indicates that Gerstle was released by Dr. Kahn to a homeless shelter. It also includes a commissioner's deed transferring Gerstle's interest in a condominium to a third party following a court-ordered sale of the property on October 16, 2012.

Summary judgment is proper where there is no material issue of fact and the movant is entitled to judgment as a matter of law. CR 56. The Jefferson Circuit Court concluded that Dr. Kahn was entitled to summary judgment because the provisions of KRS 202A.301 shield her from liability under the circumstances. The trial court also observed that Gerstle failed to present any expert medical opinion in support of her claim that Dr. Kahn had breached the relevant standard of care.

The provisions of KRS 202A.301 exempt from personal liability anyone "carrying out duties or rendering professional opinions" pursuant to the involuntary hospitalization of mentally ill persons as long as those duties and opinions are rendered in good faith, within the scope of the provider's professional duties, and in a manner consistent with the accepted professional practices. In light of the state of the record, the question on appeal does not involve disputed issues of fact but instead centers upon a question of law -- whether the circuit court erred by determining that Gerstle's claims against Dr. Khan are barred by the provisions of KRS 202A.301.

We hold that the circuit court did not err. Other than Gerstle's bare allegations of wrongdoing, there is nothing in the record that puts into question Dr.

Khan's performance of her professional duties in good faith and in a manner consistent with accepted professional practices. Under these circumstances, we cannot say that the trial court erred by concluding as a matter of law that Dr. Khan was shielded from any personal liability resulting from the performance of her duties and/or the rendering of her professional opinions. Since we are affirming the court's decision on this basis, we need not -- and will not -- consider its remaining conclusions.

We affirm the judgment with respect to Dr. Khan. We dismiss the appeal with respect to Central State and remand for additional proceedings as discussed in this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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