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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001360-MR

JUDY MARTIN

APPELLANT

ON REMAND FROM THE SUPREME COURT OF KENTUCKY
NO. 2017-SC-000129-DG

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCH PERRY, JUDGE
ACTION NO. 14-CI-000669

PARKING AUTHORITY OF RIVER CITY, INC.

APPELLEE

OPINION
REVERSING AND REMANDING

** **

BEFORE: DIXON, NICKELL, AND TAYLOR, JUDGES.

NICKELL, JUDGE: This case is before us on remand from the Supreme Court of Kentucky following vacation of our prior opinion for further consideration of whether Parking Authority of River City, Inc. (PARC) is shielded from suit by

immunity in light of *Parking Authority of River City, Inc. v. Bridgefield Casualty Insurance Company*, 477 S.W.3d 598 (Ky. App. 2015). Martin originally sought clarification of the scope of sovereign immunity in Kentucky in the wake of *Comair, Inc. v. Lexington-Fayette Urban Cty. Airport Corp.*, 295 S.W.3d 91, 104 (Ky. 2009). Her motion to transfer the appeal from this Court was denied by the Supreme Court as untimely. Recognizing we, as an intermediate appellate court, are bound by cases rendered by the Supreme Court, we attempted to forecast how it would answer Martin’s request for clarification. Based on *Bridgefield*, we now reverse and remand to the trial court for further proceedings consistent with this Opinion.

We briefly state the facts and procedural background. Judy Martin sustained injuries when she fell in a public parking garage operated by PARC, an agency of Louisville-Jefferson County Metro Government. She filed suit against PARC alleging negligent maintenance. PARC moved to dismiss the complaint claiming governmental immunity, partially basing its argument on KRS¹ 67A.910 which recognizes a lack of reasonably priced parking spaces—especially for shoppers in downtown areas within urban counties—leads to urban decay. To reverse the diminishing tax base, the Commonwealth enacted the statute to

¹ Kentucky Revised Statutes.

promote “adequate and reasonably priced parking facilities[.]” KRS 67A.910(2). PARC claimed operating the parking garage is its statutory duty.

The Jefferson Circuit Court found PARC performs a governmental function and is, therefore, shielded from suit by governmental immunity. In doing so, it distinguished performance of a governmental function—one integral to state government—from a proprietary function—one not integral to state government and often performed by private entities for profit. *Breathitt County Bd. of Educ. v. Prater*, 292 S.W.3d 883, 887-88 (Ky. 2009). The trial court dismissed Martin’s complaint, finding PARC:

provid[es] reasonably [priced] parking in a “downtown” area and that its actions involved in this matter serve a governmental function.

A subsequent motion to vacate the dismissal was denied for similar reasons. Specifically, the trial court found PARC provides “essential transportation infrastructure,” just like the airport board and airport corporation in *Comair*; fills a public need in the Commonwealth consistent with KRS 67A.910; satisfies a statewide concern even though it serves only a small portion of the state; and, as part of a merged government, essentially performs what is usually a state function.

Appealing as a matter of right, Martin urges us to equate PARC with TARC, the bus service at the center of *Transit Authority of River City v. Bibelhauser*, 432 S.W.3d 171, 173 (Ky. App. 2013), wherein the same trial court

found neither sovereign nor governmental immunity applied in a negligence action. TARC based its immunity claim on KRS 67C.101(2)(e) and 96A.020(1), but did not carry the day. In particular, KRS 96A.020(1) allows a transit authority to “sue and be sued,” and to enjoy “the powers of private corporations.” TARC failed to satisfy the two-part test applied in *Comair*, 295 S.W.3d at 99—requiring the proper combination of parentage and function performed. TARC could prove its lineage as “an agency of the consolidated Louisville Metro,” but could not demonstrate it provides a governmental function. *Bibelhauser*, 432 S.W.3d at 174-75. Because TARC provides the same transportation service supplied by for-profit taxis and buses, it was deemed a local proprietary venture rather than a provider of a “state-level government function” whose absence would leave a “state-level concern” less than fully addressed. *Id.*

On the strength of *Bridgefield*, wherein another panel of this Court held PARC does not enjoy immunity in a personal injury lawsuit, we now know PARC shares footing with TARC rather than the airport board in *Comair*. As explained in *Bridgefield*, 477 S.W.3d at 603:

PARC is not the sole, or even predominant, provider of parking in Louisville. It certainly does not provide the primary means by which people travel or cargo is moved throughout the Commonwealth. PARC merely provides a portion of parking in the Metro area, a function that must be equated to a local proprietary venture rather than that integral to state government. As such, just as TARC failed to meet the second prong of the *Comair* test in

Bibelhauser, PARC also fails in its attempt herein. Accordingly, PARC is not entitled to governmental immunity and is not immune from liability in the action herein.

Based on *Bridgefield*, we now reverse and remand to the trial court for further proceedings consistent with this Opinion.

ALL CONCUR.

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