

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2016-CA-000578-MR

JUANITA BEAMS

APPELLANT

v.

APPEAL FROM HART CIRCUIT COURT  
HONORABLE JOHN DAVID SEAY, JUDGE  
ACTION NO. 14-CI-00090

HART COUNTY FISCAL COURT

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: CLAYTON, J. LAMBERT, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: The issue in this case is whether the Hart County Fiscal Court enjoys sovereign immunity from suit. Juanita Beams alleges she suffered injuries when a door to the Hart County Courthouse allegedly malfunctioned and closed on her person. She sued the Hart County Fiscal Court for alleged negligence. The Fiscal Court claimed it was immune from suit under the doctrine

of sovereign immunity and moved for summary judgment. The trial court granted the motion. Beams appeals.

We review the trial court's grant of summary judgment *de novo*, as it involves only a legal question with no factual findings. *Brown v. Griffin*, 505 S.W.3d 777, 781 (Ky. App. 2016) (citing *Coomer v. CSX Transp., Inc.*, 319 S.W.3d 366, 370-71 (Ky. 2010)). Specifically, “[w]hether public entities are immune from suit is a legal question which an appellate court reviews *de novo*.” *Louisville/Jefferson County Metro Government v. Cowan*, 508 S.W.3d 107, 109 (Ky. App. 2016) (disc. rev. denied Feb. 9, 2017) (citing *Rowan Cnty. v. Sloas*, 201 S.W.3d 469, 475 (Ky. 2006)).

Using this standard of review, we affirm the trial court's order because two cases with facts nearly identical to the instant case hold that county governments are entitled to sovereign immunity from suit.

First, the instant case is “on all fours”<sup>1</sup> with *Cowan*, which held that a county government is an arm of the Commonwealth and entitled to sovereign immunity. There, a patron of the Mary T. Meagher Aquatic Center, a facility owned and operated by Louisville/Jefferson County Metro Government, slipped and fell on a puddle of water. She sued the Louisville Metro government for alleged negligence. The Louisville Metro government moved for summary

---

<sup>1</sup> *Jacob v. Barnard*, 307 Ky. 321, 210 S.W.2d 972 (1948).

judgment, arguing it was entitled to sovereign immunity. The trial court denied the motion, and an interlocutory appeal was initiated. *Cowan*, 508 S.W.3d. at 108-09.

A panel of this Court reversed the trial court's order and remanded the case for entry of an order granting summary judgment on sovereign immunity grounds. The Court first noted that Louisville Metro is an urban county government entitled to the same sovereign immunity protections as a county government. *Id.* at 109 (citing *Lexington-Fayette Urban Cnty. Gov't v. Smolcic*, 142 S.W.3d 128, 132 (Ky. 2004); KRS 67C.101(2)(e)). The Court then held that, "as a classification of county government and thus an arm of the Commonwealth entitled to sovereign immunity, the analysis of Louisville Metro's status need not proceed any further." *Cowan*, 508 S.W.3d at 109. The Court noted that the county was entitled to sovereign immunity, not governmental immunity, and, thus, because "Louisville Metro is entitled to sovereign immunity rather than governmental immunity[, it] is thus *absolutely immune from suit.*" *Id.* (alteration and emphasis added).

Second, the instant case is also on all fours with *Edmonson County v. French*, 394 S.W.3d 410 (Ky. App. 2013).<sup>2</sup> There, an employee at the Edmonson County Courthouse slipped and fell on ice while entering the courthouse. She sued

---

<sup>2</sup> We note that neither party has cited to *French*. See SCR 3.130(3.3)(a)(2) (requiring all attorneys to not knowingly "fail to disclose to the tribunal published legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel[.]"). We assume this failure was a mere oversight, and we admonish the attorneys in the future to present on-point authority to this Commonwealth's tribunals.

the Edmonson County Fiscal Court, along with other parties, for negligently failing to maintain the premises in a reasonable safe condition. The Edmonson County Fiscal Court moved for summary judgment on the basis of sovereign immunity. A panel of this Court reasoned that the Fiscal Court was entitled to sovereign immunity:

The first issue we shall consider is whether the county and the fiscal court are entitled to the protection of sovereign immunity. As a sovereign state, the Commonwealth is protected from suit, except as may be directed by law by the General Assembly. Ky. Const. § 231. In *Yanero v. Davis*, 65 S.W.3d 510, 517-18 (Ky. 2001), the Supreme Court of Kentucky described the doctrine of sovereign immunity:

[S]overeign immunity is a concept that arose from the common law of England and was embraced by our courts at an early stage in our nation's history. It is an inherent attribute of a sovereign state that precludes the maintaining of any suit against the state unless the state has given its consent or otherwise waived its immunity. This principle was recognized as applicable to the Commonwealth of Kentucky as early as 1828. The absolute immunity from suit afforded to the state also extends to public officials sued in their representative (official) capacities, when the state is the real party against which relief in such cases is sought. [Citations omitted.]

The *Yanero* Court went on to state:

The rationale for absolute immunity for the performance of legislative, judicial and prosecutorial functions is not

to protect those individuals from liability for their own unjustifiable conduct, but to protect their offices against the deterrent effect of a threat of suit alleging improper motives where there has been no more than a mistake or a disagreement on the part of the complaining party with the decision made.

*Id.* at 518.

It is well established that “Kentucky counties are cloaked with sovereign immunity.” *Lexington-Fayette Urban County Government v. Smolcic*, 142 S.W.3d 128, 132 (Ky. 2004). In *Franklin County v. Malone*, 957 S.W.2d 195, 204 (Ky. 1997) (*overruled on other grounds by Commonwealth v. Harris*, 59 S.W.3d 896 (Ky. 2001), and on other grounds by *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2001)), the Supreme Court reiterated its previous holding that “a county is a political subdivision of the Commonwealth and as such is an arm of state government protected by the same sovereign immunity as the state.” Therefore, “in the absence of waiver, the county is immune from tort liability.” *Id.* at 203.

Based upon these holdings, the county and the fiscal court are entitled to the protection of sovereign immunity, and the circuit court erred in failing to dismiss those parties from French’s lawsuit.

*French*, 394 S.W.3d at 413-14 (alterations in original).

We find the holdings of these cases inescapable. Beams’ policy argument – that the circumstances of her case make sovereign immunity “unconscionable” – cannot overcome the express holdings granting sovereign immunity to county governments. Likewise, Beams misses the mark by arguing

that because the Commonwealth has waived its sovereign immunity in limited circumstances pursuant to KRS 44.072, the counties must have done the same. That statute is narrowly construed. *Thurman v. Com., Transp. Cabinet, Dept. of Highways*, 981 S.W.2d 140 (Ky. App. 1998); *Powell v. Board of Educ. of Harrodsburg*, 829 S.W.2d 940 (Ky. App. 1991). It includes no provisions for bringing claims against county governments. And, to the extent it permits claims, it only permits them to originate in the Board of Claims, with appeals then being taken to the Circuit Court. Beams' Complaint, being filed in the Circuit Court, does not even comport with the statute Beams argues destroys the county's immunity from suit.

Accordingly, we affirm the trial court's order granting summary judgment in favor of the Fiscal Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bryan E. Bennett  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Timothy J. Walker  
Lexington, Kentucky