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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001549-MR

JEFFREY STEWART

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE KENT HENDRICKSON, JUDGE
ACTION NO. 13-CI-00490

KATHY LITTERAL; LENN NEAL;
AND RICK JONES

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, J. LAMBERT AND STUMBO,¹ JUDGES.

STUMBO, JUDGE: Jeffrey Stewart appeals from an order of the Harlan Circuit Court which granted summary judgment in favor of Kathy Litteral, Lenn Neal, and Rick Jones. Appellant argues that Appellees were liable for injuries he sustained

¹ Judge Janet Stumbo authored this opinion prior to retiring from the Kentucky Court of Appeals effective December 31, 2017. Release of this opinion was delayed by administrative handling.

and were not entitled to qualified official immunity. We believe summary judgment was properly granted and affirm.

Appellant is an inmate in the custody of the Kentucky Department of Corrections (DOC). At all times relevant to this case, Appellant was incarcerated at the Bell County Forestry Camp (BCFC). Ms. Litteral is the warden of BCFC, Lenn Neal is the Deputy Warden, and Rick Jones is an officer of BCFC. During his incarceration, Appellant was assigned various jobs to do for government entities. This program is called the Governmental Services Program (GSP). When Appellant was injured, he was working for the Kentucky Transportation Cabinet (KYTC) pursuant to a contract between the DOC and the KYTC. Specifically, Appellant was part of a road crew cutting down trees adjacent to a highway.

On October 5, 2012, Appellant was cutting down a tree when it hit him during its fall to the ground. Appellant was severely injured and still suffers from pain due to his injuries. Appellant sued Appellees claiming that he lacked the proper supervision, training, and safety equipment for performing this type of job. The trial court granted summary judgment to Appellees finding that the KYTC, not Appellees, was responsible for the training, supervision, and safety of the inmates, and that Appellees were entitled to qualified official immunity. This appeal followed.

The standard of review on appeal of a summary judgment 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. Kentucky Rules of Civil Procedure (CR) 56.03. . . . “The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary “judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances.” *Steelvest*, 807 S.W.2d at 480, *citing Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985). Consequently, summary judgment must be granted “[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . . .” *Huddleston v. Hughes*, 843 S.W.2d 901, 903 (Ky. App. 1992)[.]

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996).

Appellant argues on appeal that Appellees were responsible for his training, supervision, and safety while working for the KYTC and that Appellees were not entitled to qualified official immunity. We disagree.

The DOC has a set of policies and procedures relating to inmate participation in the GSP. These policies indicate that an agency requesting an inmate workforce, in this case the KYTC, should have one or more of its employees designated as a GSP Supervisor. DOC Policy Number 19.1(C). This GSP Supervisor is then responsible for the inmates’ safety. DOC Policy Number 19.1(J). Furthermore, the contract between the DOC and the KYTC states that the KYTC is responsible for providing “training on the proper use and care of tools and other equipment used at the work site.” We agree with the trial court that the

KYTC, not Appellees, had the legal and contractual obligation to provide Appellant with the proper training and to ensure Appellant's safety on the job site.²

While the trial court focused primarily on the lack of an obligation on behalf of Appellees to ensure proper training and safety standards, it also stated that Appellees were entitled to qualified official immunity.

[W]hen sued in their individual capacities, public officers and employees enjoy only qualified official immunity, which affords protection from damages liability for good faith judgment calls made in a legally uncertain environment. Qualified official immunity applies to the negligent performance by a public officer or employee of (1) discretionary acts or functions, *i.e.*, those involving the exercise of discretion and judgment, or personal deliberation, decision, and judgment; (2) in good faith; and (3) within the scope of the employee's authority.

Yanero v. Davis, 65 S.W.3d 510, 522 (Ky. 2001) (internal citations omitted).

Here, because we have found that Appellees were not responsible for the training and safety of the inmate on the worksite, we have to look at functions Appellees were carrying out. Doing such in this case, however, is difficult. Appellant cites multiple times to the depositions of Appellees. These depositions are not contained in the record before us. It is Appellant's "responsibility to present a complete record for review." *Mitchell v. Commonwealth*, 323 S.W.3d 755, 760 (Ky. App. 2010) (citations omitted). "Ultimately, when the record is incomplete, we assume that the omitted record supports the decision of the trial

² When suit was originally filed, Appellant named as parties two KYTC employees, believing they were the KYTC on-sight supervisor and supervisor of the on-sight supervisor. The parties were dismissed from the suit because they had been misidentified. Appellant agreed to the dismissal. No other KYTC employees were named, nor was the KYTC.

court.” *Harper v. Commonwealth*, 371 S.W.3d 763, 769 (Ky. App. 2011) (citation omitted).

From the record we do have, we can discern that Mrs. Litteral and Mr. Neal were responsible for allowing Appellant to participate in the GSP and Mr. Jones was responsible for inmate security at the worksite. As stated previously, Appellees were not responsible for training inmates or for ensuring their safety, other than for security purposes. These were the responsibility of the KYTC. Deciding whether or not to allow inmates to participate in the GSP is clearly discretionary. As is how best to secure the worksite. Appellant makes no argument that Appellees improperly allowed inmates to participate in the GSP or that inmate security was deficient at the worksite. Based on the incomplete record before us, we believe all of these acts were discretionary, made in good faith, and within each individual Appellee’s scope of authority.

In addition, the Kentucky Supreme Court found similarly in the case of *Rowan County v. Sloas*, 201 S.W.3d 469 (Ky. 2006). In that case, an inmate was injured while cutting trees for a roadside project. The Court found that allowing inmates to work on a public project, and the supervision of said inmates, were discretionary acts made in good faith. The reasoning set forth in *Sloas* is applicable and binding to the case at hand.

Based on the foregoing, we affirm the judgment of the trial court.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
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