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OPINION OF DECEMBER 21, 2018, WITHDRAWN

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000669-MR

WILLIAM S. ALBRIGHT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 16-CI-003155

LINDSEY CHILDERS, AS
ADMINISTRATRIX OF THE ESTATE
OF CAMERON PEARSON; LINDSEY
CHILDERS, AS NEXT FRIEND AND GUARDIAN
OF A.P., A MINOR; LINDSEY CHILDERS, AS
NEXT FRIEND AND GUARDIAN OF C.P., A
MINOR; LINDSEY CHILDERS, AS NEXT FRIEND
AND GUARDIAN OF E.P., A MINOR; AMANDA
WAITS; AND KYLE PEARSON

APPELLEES

AND

NO. 2017-CA-000670-MR

HARDSHELL TACTICAL, LLC

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT

v. HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 16-CI-003155

LINDSEY CHILDERS, AS
ADMINISTRATRIX OF THE ESTATE
OF CAMERON PEARSON; LINDSEY
CHILDERS, AS NEXT FRIEND AND GUARDIAN
OF A.P., A MINOR; LINDSEY CHILDERS, AS
NEXT FRIEND AND GUARDIAN OF C.P., A
MINOR; LINDSEY CHILDERS, AS NEXT FRIEND
AND GUARDIAN OF E.P., A MINOR; AMANDA
WAITS; KYLE PEARSON; WILLIAM ALBRIGHT;
AND BASU PROPERTIES, LLC

APPELLEES

OPINION
REVERSING

** **

BEFORE: MAZE AND NICKELL, JUDGES; HENRY, SPECIAL JUDGE.¹

MAZE, JUDGE: This appeal arises from a Jefferson Circuit Court’s denial of Appellants’, William Albright and Hardshell Tactical, LLC, motion for judgment on the pleadings asserting immunity under KRS² 503.085. After a careful review of the record, we are obligated to reverse based on the reasons stated in this opinion.

Background

¹ Special Judge Michael L. Henry sitting by assignment of the Chief Justice pursuant to Section 110(5)(b).

² Kentucky Revised Statutes.

On July 8, 2015, two brothers, Cameron Pearson and Kyle Pearson, were engaged in a physical altercation over a handgun in a parking lot. The parking lot was located outside Hardshell Tactical, LLC. Hardshell is a gun store located in Louisville, and at the time of the incident was co-owned by William Albright. Albright heard a gunshot and then exited Hardshell and approached the brothers who were wrestling over the gun. Albright began ordering the two brothers to drop the gun. During the struggle, at least two shots were fired by the brothers. Albright ultimately shot at the two brothers. This resulted in injuries to Kyle Pearson and the death of Cameron Pearson.

Albright was indicted by a Jefferson County grand jury on counts of murder and assault in the first degree. Albright filed a motion to dismiss the criminal charges claiming immunity under KRS 503.085. The court held a hearing on the issue of immunity and found that Albright was immune from criminal prosecution.

Just before the criminal charges were dismissed, a civil action was filed against Albright alleging negligent use of force. This civil suit was brought by Lindsey Childers, as administratrix of the Estate of Cameron Pearson and as Next Friend and Guardian of Minors A.P., C.P., and E.P.; Kyle Pearson and Amanda Waits (Appellees). Albright argued that because the criminal court found he was immune under KRS 503.085, this immunity extended to all potential civil

liability arising from the same use of force. The civil trial court denied Albright's and Hardshell's motions for judgment on the pleadings. These appeals follow.

We note at the outset, there are two separate appeals which have not been consolidated but "are to be heard with." As the circuit court case is the same, and both involve the same arguments and issues, we will address both appeals with one opinion.

Standard of Review

A judgment on the pleadings "should be granted if it appears beyond doubt that the nonmoving party cannot prove any set of facts that would entitle [him or her] to relief." *City of Pioneer Village v. Bullitt County ex rel. Bullitt Fiscal Court*, 104 S.W.3d 757, 759 (Ky, 2003) (internal citations omitted). This court reviews a denial of a judgment on the pleadings *de novo*. *Schultz v. General Elec. Healthcare Financial Services Inc.*, 360 S.W.3d 171, 177 (Ky. 2012).

The standard of review of the trial court's probable cause immunity determination is not *de novo*. *Commonwealth v. Lemons*, 437 S.W.3d 708, 715 (Ky. 2014). Rather, the appellate court reviews whether there was substantial basis in fact to support the trial court's conclusion that the defendant did not act in self-defense. *Id.* at 714-15. On the other hand, when interpreting a statute and looking at legislative intent, we look first to the language of the statute, giving the words their plain and ordinary meaning. *Osborne v. Commonwealth*, 185 S.W.3d 645,

648-49 (Ky. 2006). But where a statute is unambiguous, extrinsic evidence of legislative intent and public policy is not admissible. *Lewis v. Jackson Energy Co-op. Corp.*, 189 S.W.3d 87, 94 (Ky. 2005). Because the construction and application of a statute is a question of law, it is subject to *de novo* review. *Richardson v. Louisville/Jefferson County Metro Cty Gov't*, 260 S.W.3d 777, 779 (Ky. 2008) (citing *Osborne*, 185 S.W.3d at 648).

Analysis

On appeal, Albright and Hardshell contend that the finding of immunity for criminal liability extends to civil liability and that the trial court erred by denying their motion for judgment on the pleadings. They also contend that the doctrine of collateral estoppel prevents the action from going forward. We agree.

While this is a matter of first impression, the ultimate question is whether a finding of criminal immunity under KRS 503.085 subsequently bars civil liability. The immunity statute at issue, KRS 503.085(1), states that “[a] person who uses force . . . is justified in using such force and immune from criminal and civil action for the use of such force” KRS 503.085(2) explains that the prosecution bears the burden of “probable cause that the force that was used was unlawful.”

Collateral estoppel is key to answering the question presented in this case, as well as a basic interpretation of the statute. Collateral estoppel, also known as claim preclusion, bars further litigation when certain elements are met.

The essential elements of collateral estoppel to be gathered from *Sedley* are as follows:

- (1) identity of issues;
- (2) a final decision or judgment on the merits;
- (3) a necessary issue with the estopped party given a full and fair opportunity to litigate;
- (4) a prior losing litigant.

Moore v. Commonwealth, 954 S.W.2d 317, 319 (Ky. 1997) (citing *Sedley v. City of West Buechel*, 461 S.W.2d 556 (Ky. 1970)).

Here, the criminal court previously addressed the issue of whether Albright was entitled to immunity under KRS 503.085. The criminal court, after a hearing on the motion, found that he was and explained that “the Commonwealth has not met its burden of establishing probable cause to believe Albright was not acting in self-protection, and/or protection of others.” The court held that “Albright is immune from prosecution under the facts of this case and the law of the Commonwealth” and therefore dismissed the criminal action against him.

The civil court, however, found that Albright was not immune civilly. In finding this, the court explained that “[a]s it pertains to Cameron Pearson, it is undisputed by both parties that Cameron was unarmed at the time of his death. Thus it cannot be definitively said at this juncture in the litigation that Albright’s

force was ‘permitted . . .’ as required by KRS 503.085. Accordingly, Plaintiffs’ claim must be allowed to go forward.” The court also found that collateral estoppel did not apply.

The requirement of identity of the issues between the criminal case and civil were met here. The identical issue is whether Albright had immunity under the statute. A final decision on that issue was made by the criminal court.³ While the parties were not identical, the statute makes clear that the standard of liability is the same for both criminal and civil actions. The language of KRS 503.085 creates a unique situation where collateral estoppel may apply between civil and criminal issues. Therefore, the Commonwealth presented the evidence and the court found that they did not meet the burden. While the parties would have been different, the interest of the Commonwealth would be the exact same as the Appellees in the civil case and were therefore not prevented from a full and fair opportunity to present their case. Consequently, when a criminal court makes a finding of immunity under the statute, we hold that collateral estoppel applies to preclude a civil action arising from the same conduct from going forward. We are troubled by this result, as it leaves no remedy for the estate of an unarmed brother

³ This Court affirmed the criminal court’s finding of immunity in *Commonwealth v. Albright*, No. 2016-CA-001352-MR, 2018 WL 1770328 (Ky. App. 2018). The Kentucky Supreme Court denied discretionary review of that opinion on September 19, 2018. Consequently, the requirement of a final decision on the merits has been satisfied.

who was killed while attempting to disarm his armed brother. However, we are compelled to follow the law, since it is clear that collateral estoppel applies to preclude this action.

Even without relying on collateral estoppel, the language and meaning of the statute is clear. It appears the legislature's intent was to prevent someone who was found to be criminally immune from being sued civilly. We will not address the constitutionality of the statute as it appears no notice was given to the Attorney General in accordance with KRS 418.075(1).

Conclusion

For the reasons expressed herein, as a matter of first impression, we hold that if an individual is found to be criminally immune from prosecution under KRS 503.085, that individual is also immune from civil litigation on the same facts. The result in this case is challenging to this Court. However, should the legislature have intended a different meaning of the statute, then that is something the legislature should address. Therefore, we reverse the trial court's finding and direct that the trial court dismiss the complaint.

ALL CONCUR.

BRIEF FOR APPELLANT,
WILLIAM S. ALBRIGHT:

Gregg E. Thornton
Maxwell Smith
Lexington, Kentucky

BRIEF FOR APPELLANT,
HARDSHELL TACTICAL, LLC:

Melissa Thompson Richardson
Lexington, Kentucky

Ryan Becker
Louisville, Kentucky

ORAL ARGUMENT FOR
APPELLANT, WILLIAM S.
ALBRIGHT:

Gregg E. Thornton
Lexington, Kentucky

ORAL ARGUMENT FOR
APPELLANT, HARDSHELL
TACTICAL, LLC:

Melissa Thompson Richardson
Lexington, Kentucky

BRIEF FOR APPELLEE, LINDSEY
CHILDERS:

Martin Pohl
Louisville, Kentucky

Danielle Blandford
Louisville, Kentucky

BRIEF FOR APPELLEE, BASU
PROPERTIES, LLC:

Charles H. Cassis
Aaron John Silletto
Louisville, Kentucky

ORAL ARGUMENT FOR
APPELLEES:

Aaron John Silletto
Louisville, Kentucky