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Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000709-MR

REGINA MEEHAN — APPELLANT

APPEAL FROM PERRY CIRCUIT COURT
v. HONORABLE JOHNNY RAY HARRIS, SPECIAL JUDGE
ACTION NO. 14-CI-00064

E.G.B., A MINOR CHILD,
THROUGH AND ON BEHALF
OF HIS MOTHER, ANGIE BAKER — APPELLEE

NO. 2017-CA-000710-MR

JONATHAN JETT — APPELLANT

APPEAL FROM PERRY CIRCUIT COURT
v. HONORABLE JOHNNY RAY HARRIS, SPECIAL JUDGE
ACTION NO. 14-CI-00064

E.G.B., A MINOR CHILD,
THROUGH AND ON BEHALF
OF HIS MOTHER, ANGIE BAKER — APPELLEE

NO. 2017-CA-000711-MR

CHARLES E. BROWNING, JR. APPELLANT

APPEAL FROM PERRY CIRCUIT COURT
v. HONORABLE JOHNNY RAY HARRIS, SPECIAL JUDGE
ACTION NO. 14-CI-00064

E.G.B., A MINOR CHILD,
THROUGH AND ON BEHALF
OF HIS MOTHER, ANGIE BAKER APPELLEE

OPINION
REMANDING

** ** ** ** **

BEFORE: JONES, MAZE, AND TAYLOR, JUDGES.

JONES, JUDGE: Appellants bring this appeal challenging the Perry Circuit Court's denial of their motions for summary judgment. Appellants posit that the circuit court's order denied their claims of qualified official immunity, therefore allowing them to immediately appeal that denial to this Court. After having reviewed the record in conjunction we all applicable legal authority, we have determined that we must remand.

It is not clear that the circuit court ruled on the issue of qualified immunity. The written order does not address qualified immunity. This, coupled with the circuit court's oral pronouncement that it did not intend to rule on qualified immunity at the time it entered the written order, lead us to conclude that appeal of the immunity issue is premature because it has not yet been addressed by the circuit court. While we appreciate that immunity should be resolved in a timely manner to avoid undue time and expense, appellate courts are not the proper forum to have the issue addressed for the first time. If the circuit court refuses to act or unduly delays, the appropriate remedy is to seek a writ directing the circuit court to rule on the issue. Where the circuit court has yet to rule on the issue, we have nothing to review. Accordingly, for reasons more fully explained below, we remand this action to the Perry Circuit Court for additional findings of fact and conclusions of law on the issue of immunity.

I. BACKGROUND

Appellants are former and current administrators in the Perry County School System: Jonathan Jett is currently the superintendent of Perry County Schools, and has served in that position since November 1, 2012;[1] Charles Browning was the principal of Chavies Elementary School for school years 2004-

[1] Mr. Jett was the interim superintendent beginning November 1, 2012 through June 30, 2013. He was hired as superintendent on July 1, 2013.

13; and Regina Meehan was the principal of Chavies Elementary School for the 2013-14 school year.

Appellee, E.G.B., attended kindergarten at Chavies during the 2012-13 school year. He returned to Chavies in August of 2013 to begin first grade. Less than a month after E.G.B. started the first grade, he informed his mother ("Mother") that he had been sexually assaulted by an older student in the bathroom at Chavies. E.G.B. told Mother that this was not the first time he had been sexually assaulted at Chavies; he alleged that the same perpetrator had also assaulted him in the bathroom when he was a kindergartner. In response to E.G.B.'s allegations, Mother had E.G.B. look through an old Chavies yearbook and asked him to point out the student who had assaulted him. E.G.B. identified C.E.B., an eighth-grade special needs student, as the perpetrator. C.E.B. had been a student at Chavies during the first semester of the 2012-13 school year, but had been placed at the Alternative School for the second semester. C.E.B. had returned to Chavies at the beginning of the 2013-14 school year and was still enrolled there at the time E.G.B. made his allegations.

After E.G.B. had identified C.E.B. as the perpetrator of his assault, Mother went to see her friend, Phyliss Noble, who worked at Chavies, to ask about what steps she should take. Ms. Noble contacted Ms. Meehan and informed her of E.G.B.'s allegations against C.E.B. Ms. Meehan then contacted Mr. Jett, who

contacted the Kentucky State Police (the "KSP") and the Cabinet for Health and Family Services (the "Cabinet"). Ms. Meehan was told to keep C.E.B. under constant supervision at school until further action was taken. The next day, following Mother and E.G.B.'s meeting with Mr. Jett at his office, C.E.B. was removed from Chavies by a KSP detective. E.G.B. returned to Chavies for two days, but was enrolled at a private school the following week. In January of 2014, C.E.B. entered an admission to two charges of first-degree sexual abuse, with a provision that he was mentally ill, in a juvenile case heard in Perry District Court.

On February 27, 2014, E.G.B., by and through Mother, filed a complaint against Mr. Jett, Mr. Browning, and Ms. Meehan (collectively referred to as "Appellants") in their individual capacities.[2] An amended complaint was filed on July 28, 2014 to clarify E.G.B.'s claims. Therein, the following causes of action were alleged: violation of E.G.B.'s civil rights; failure to supervise; failure to report; and failure to implement the student discipline code. In sum, the amended complaint alleged that but for Appellants' negligence, E.G.B. would not have been sexually assaulted.

[2] The complaint additionally named Kimberly Hoskins, E.G.B.'s kindergarten teacher, and the Perry County School District Finance Corporation—later amended to the Perry County School Board ("PCSB")—as defendants. Both Hoskins and PCSB were dismissed from the action by agreed orders. E.G.B.'s first grade teacher was not named as a defendant.

Mr. Jett filed a motion for summary judgment on November 3, 2016. Mr. Jett argued that E.G.B.'s civil rights claim must fail as a matter of law, as there is no private cause of action under the Kentucky Constitution allowing a claimant to recovery monetary damages. Further, Mr. Jett noted that while E.G.B. cited to KRS[3] Chapter 344, it was inapplicable in this situation because E.G.B. was not an employee of the school system and had never alleged that he was part of a protected class. As to the remaining allegations against him, Mr. Jett contended that he was immune from liability on the grounds of qualified official immunity. Notwithstanding that immunity, Mr. Jett contended that there were no material issues of fact as to whether he had failed to supervise students, report abuse, or implement a disciplinary code, and that he was entitled to judgment as a matter of law. Mr. Jett argued that deposition testimony established that he had reported the assault to the KSP and the Cabinet immediately upon learning of E.G.B.'s allegations. While C.E.B. had demonstrated behavorial issues in the past—none of which involved sexually inappropriate actions with young boys—C.E.B. had been placed in the Alternative School upon his misbehavior. Further, after C.E.B. had been classified as a special education student, an ARC[4] had been formed to

[3] Kentucky Revised Statutes.

[4] Admissions and Release Committee.

monitor and address C.E.B.'s educational and behavioral needs. Mr. Jett noted that E.G.B. had not put forth any evidence showing that he had any information about C.E.B. engaging in inappropriate sexual conduct with anyone prior to the time E.G.B. made his allegations.

On November 7, 2016, Ms. Meehan filed a motion for summary judgment.[5] Ms. Meehan contended that she was entitled to summary judgment on E.G.B.'s constitutional claims as there is no private right of action under the Kentucky Constitution and no individual liability under KRS Chapter 344. She contended that E.G.B.'s failure to supervise claim must fail, as there was no evidence to support it in the record. Ms. Meehan noted that, following the filing of this suit, the Cabinet had investigated whether PCSB or any teachers or administrators at Chavies had failed to properly supervise C.E.B. Following that investigation, the Cabinet had concluded that there was no substantiation to the allegation that any school employees knew or had reason to know that C.E.B. had abused other students and had failed to properly supervise him. Additionally, KSP Detective Vicki Day testified that she had found no evidence that any school employees had failed to report abuse when she investigated E.G.B.'s allegations. Ms. Meehan contended that C.E.B.'s student records clearly demonstrated that

[5] Ms. Meehan's motion for summary judgment is not included in the official record on appeal to this Court. A copy of the motion, which is attached as an appendix to Ms. Meehan's brief, is stamped indicating that the motion was filed with the Perry Circuit Court on November 7, 2016.

C.E.B. had been supervised, monitored, and disciplined for the behavioral issues he did exhibit, and that such supervision was governed under the applicable laws for special education students. As to E.G.B.'s claim that she had failed to report abuse, Ms. Meehan noted that she reported the alleged assault as soon as she learned of it. She contended that E.G.B. had not put forth any evidence suggesting that she knew or had reasonable cause to believe that E.G.B. had been abused before being notified by Ms. Noble. Ms. Meehan argued that there was no cause of action for "failure to implement a disciplinary code," and accordingly, that claim must fail as a matter of law. Finally, Ms. Meehan contended that all of E.G.B.'s claim against her were barred by qualified official immunity. She contended that, as principal, supervision of Chavies and its students was under her discretion, and that E.G.B. had failed to demonstrate that she had acted in bad faith.

Mr. Browning moved for summary judgment on November 14, 2016. By that motion, he incorporated the arguments made by Mr. Jett and Ms. Meehan. Further, Mr. Browning noted that he had only been principal at Chavies during the 2012-13 school year. As Mother had not become aware of the sexual assault and the identity of the alleged perpetrator until September of 2013, Mr. Browning contended that he could not be held liable for failure to supervise, report, or implement a student discipline code.

E.G.B. filed a response addressing all Appellants' motions for summary judgment. The bulk of this response was spent detailing C.E.B.'s behavorial issues—as documented in his educational records and in records from private mental-health facilities—from 2005 forward. Additionally, E.G.B. noted that C.E.B. had pleaded guilty but mentally ill to two counts of first-degree sexual abuse in a separate Perry County District Court action on January 29, 2014,[6] and discussed the fact that C.E.B. had himself been a victim of sexual assault in 2012. In addressing Appellants' arguments, E.G.B. contended that Appellants' duty to supervise was governed by PCSB Policy 09.211, which states that: "Students will be under the supervision of a qualified adult. Each teacher and administrator shall hold pupils to a strict account for their conduct on school premises, on the way to and from school, and on school-sponsored trips and activities." Under PCSB Policy 09.211 AP. 1, principals are required to develop a plan of supervision for their schools and submit those plans to the superintendent for review prior to the start of each school year. E.G.B. contended that this duty had been breached as neither Mr. Browning nor Ms. Meehan had submitted a plan of supervision and, accordingly, Mr. Jett had not reviewed any plan. E.G.B. alleged that when C.E.B. began his eighth-grade year at Chavies, he had not been supervised in any manner.

[6] We note that C.E.B. was a minor at the time the district court action occurred and was tried as a juvenile.

E.G.B. contended that this complete lack of supervision was in direct contradiction to the mandate contained in C.E.B.'s IEP[7] dated April 8, 2013, requiring that C.E.B. to have "observation across all settings." Because both the duty to submit a supervision plan and the duty that C.E.B. be observed were direct mandates, E.G.B. argued that they were ministerial duties. Additionally, because both Mr. Browning and Ms. Meehan had testified that they had helped supervise students in the morning before classes started, E.G.B. contended that the morning supervision constituted a ministerial duty, which both Mr. Browning and Ms. Meehan had failed to comply with.

Regarding Appellants' duty to report, E.G.B. noted that KRS 161.180 mandates that teachers and administrators in the public-school system hold pupils to strict account for their conduct on school grounds. Further, PCSB Policy 09.4281 required students who had engaged in harassment to be disciplined, and required a school's principal to report the harassment to the superintendent once he or she became aware of it. E.G.B. argued that Mr. Browning had failed to abide by this duty. He contended that C.E.B. had harassed numerous students during his time at Chavies, as evinced in the minutes from C.E.B.'s ARC meetings, but had never been disciplined for it. Mr. Jett had testified that he was unaware of prior instances where C.E.B. had sexually harassed other students, which indicated that

[7] Individualized Education Plan.

Mr. Browning had never reported the harassment to him. Additionally, PCSB Policy 09.2211, in conjunction with KRS 158.154, requires that a principal who has a reasonable belief that a student has committed a sexual offense on school grounds immediately report the act to the appropriate law enforcement agency. E.G.B. contended that numerous students had complained about C.E.B. either exposing himself at school or having sexual contact with students at school; Mr. Browning had never reported these complaints.

Mr. Browning filed a sur-reply to E.G.B.'s response to his motion for summary judgment on December 2, 2016. Therein, Mr. Browning again stated that he had not been the principal at Chavies during the 2013-14 school year, when Mother had reported the sexual abuse. He noted that during his tenure as principal of Chavies, C.E.B. had been removed to the Alternative School due to behavioral issues unrelated to E.G.B. Mr. Browning contended that this act demonstrated that he and C.E.B.'s ARC had reported C.E.B.'s other behavioral issues and protected the students of Chavies by having C.E.B. placed in the Alternative School where he could be more closely monitored. Additionally, Mr. Browning pointed out that Mother had made complaints to him that E.G.B. was being bullied—but not sexually assaulted—during the 2012-13 school year. After he was informed of the bullying allegation, Mr. Browning had E.G.B. stand with him every morning to try to identify the bully. Regarding E.G.B.'s allegations that he had first been sexually

assaulted while he was a kindergartner at Chavies, Mr. Browning noted that Ms. Hoskins, E.G.B.'s kindergarten teacher, had testified that neither E.G.B. nor Mother had ever reported any incident of sexual assault to her. Mr. Browning contended that he could not fail in his duty to report sexual assault if no one had informed him that sexual assault had occurred.

Ms. Meehan filed a response in support of her motion for summary judgment on December 20, 2016. Ms. Meehan contended that E.G.B.'s references to the record in the district court case should be inadmissible in this case as a matter of law. She additionally argued that E.G.B. had failed to establish that any of the Appellants had knowledge of C.E.B.'s behavioral issues as documented in his private psychiatric records or in investigative papers of the KSP; accordingly, E.G.B. should not be able to cite to those documents in support of his claims. While E.G.B. cited to PCSB policy 09.221 AP.1 as the source of her duty to create a plan of supervision prior to the start of each school year, Ms. Meehan noted that that 09.221 AP. 1 had not been adopted until July 19, 2016—*after* E.G.B. alleged that Ms. Meehan had breached her duty under the policy. Ms. Meehan contended that, absent this inapplicable PCSB policy, E.G.B. had not put forth any substantive argument demonstrating that she had knowledge of C.E.B.'s past behaviors that would require her to supervise C.E.B. in a different manner than she had. Further, she contended that E.G.B. had failed to respond to her motion for

summary judgment as to the constitutional claims; her failure to report; or her failure to implement a student disciplinary code. Accordingly, Ms. Meehan argued that those claims, as related to her, should be dismissed with prejudice.

E.G.B. filed a second response to Appellants' motions for summary judgment—identical to the response filed on December 1, 2016—on December 22, 2016. On January 5, 2017, Mr. Jett filed a reply to E.G.B.'s response to his motion for summary judgment and a response to E.G.B.'s motion for summary judgment.[8] To begin with, Mr. Jett objected to E.G.B.'s summary of C.E.B.'s behavioral issues without citation to evidence of record and E.G.B.'s referencing C.E.B.'s juvenile adjudication in the district court. Additionally, Mr. Jett contended that E.G.B. had failed to raise a material issue of fact regarding his liability, entitling him to judgment as a matter of law. Mr. Jett noted that PCSB policy 09.221 AP. 1 was not yet in effect at the time the assault on E.G.B. occurred. Regardless, Mr. Jett contended that both Mr. Browning and Ms. Meehan had testified at length to the respective discipline and supervision policies they had in place during the years E.G.B. alleged that the sexual assaults occurred. Mr. Jett argued that E.G.B. had not put forth any proof that he had knowledge of C.E.B. that should have prompted

[8] The record on appeal does not contain a motion for summary judgment filed by E.G.B. Based on Appellants' responses to E.G.B.'s motion for summary judgment and the circuit court's order denying E.G.B.'s motion for summary judgment, it appears that E.G.B.'s response dated December 22, 2016, was treated as a motion for summary judgment.

him to intervene in C.E.B.'s placement at Chavies despite the recommendation of C.E.B.'s ARC or that such knowledge should be imputed to him.

On January 6, 2017, Ms. Meehan filed a response in opposition to E.G.B.'s motion for summary judgment. As did Mr. Jett, Ms. Meehan objected to E.G.B.'s referring to facts outside of the record in making his arguments. Ms. Meehan argued that E.G.B. had failed to establish any facts demonstrating that she had breached any duty to him concerning her supervision of students or to show that the way in which she supervised students was not a discretionary function. Further, E.G.B. had offered no argument of fact or law establishing that Ms. Meehan knew of C.E.B.'s past behavorial issues or that knowledge of C.E.B.'s past educational or medical records should be imputed to her. To the extent that E.G.B. argued that she should have ordered that C.E.B. have additional supervision, outside of what was recommended by his ARC, Ms. Meehan noted that 707 KAR[9] 1:320 prohibited that. Ms. Meehan stated that C.E.B. had not had any behavioral issues during the 2013-14 school year until Mother had reported E.G.B.'s allegations.

Mr. Browning also filed a response in opposition to E.G.B.'s motion for summary judgment on January 6, 2017. Mr. Browning maintained his

[9] Kentucky Administrative Regulations.

argument that the timeline of the events alleged demonstrated that he did not breach a duty to supervise. Mr. Browning argued that because C.E.B. was a special needs student, it was the sole duty of C.E.B.'s ARC to dictate C.E.B.'s educational and supervision needs. He was unable to require more or less supervision of C.E.B. than what the ARC recommended. Accordingly, Mr. Browning contended that he had complied with any duty he had to supervise C.E.B. by implementing the ARC's recommendations.

The circuit court conducted a hearing on Appellants' motions for summary judgment and E.G.B.'s motion for summary judgment on February 17, 2017.[10] On February 21, 2017, E.G.B. filed an amended response to Appellants' motions for summary judgment and a reply to Appellants' responses to his motion for summary judgment. Therein, E.G.B. cited to quotes from his deposition testimony, in which he had testified that he told Ms. Hoskins that C.E.B. had touched him while he was in the bathroom. E.G.B. testified that Ms. Hoskins had taken him to Mr. Browning's office, where he informed Mr. Browning that C.E.B. had touched him.[11] This had occurred when E.G.B. was a kindergartner at Chavies. E.G.B. argued that, given his age and maturity level, his allegation that

[10] This Court has received a partial recording of that hearing; however, it is clear that the beginning portion was not recorded. The circuit court did not make any findings from the bench.

[11] Both Ms. Hoskins and Mr. Browning testified in depositions that this event never occurred.

C.E.B. had touched him in the bathroom should have put Mr. Browning on notice that C.E.B. had sexually assaulted him.

E.G.B. noted that C.E.B.'s IEP effective April 8, 2013 through April 8, 2014, listed measurable annual goals and benchmarks for C.E.B. One such goal was that, given two reminders, C.E.B. should display appropriate behaviors when interacting with peers and adults across settings on four out of five days of each week. One stated method of measurement of C.E.B.'s progress was "observation across settings." To help achieve that goal, C.E.B. was instructed to refrain from discussing sexually related topics with his peers and refrain from behaving in a sexual nature towards others. C.E.B.'s teachers were instructed to give C.E.B. reminders of appropriate behavior. E.G.B. stated that, under 34 C.F.R.[12] § 300.323(d), C.E.B.'s IEP was required to be made accessible to all of C.E.B.'s teachers. Thus, E.G.B. contended that Mr. Browning had the duty to make sure that each of C.E.B.'s teachers had been provided with a copy of his IEP. Because Mr. Browning had testified that he did not recall C.E.B. requiring any specialized supervision, E.G.B. contended that Mr. Browning had failed to perform this duty. E.G.B. contended that the IEP dated April 8, 2013, remained in effect at the beginning of the 2013-14 school year, when Ms. Meehan became principal. E.G.B noted that Ms. Meehan had testified that she had never been informed of the fact

[12] Code of Federal Regulations.

that C.E.B. was in need of specialized supervision. He argued that it was Mr. Jett's duty to provide Ms. Meehan with a copy of C.E.B.'s IEP, and that the fact that Ms. Meehan was unaware of C.E.B. needing special supervision indicated that Mr. Jett had failed to do so. Additionally, E.G.B. contended that Ms. Meehan had failed to supervise C.E.B. as provided for in his IEP. E.G.B. acknowledged that, on August 22, 2013, an ARC meeting concerning C.E.B. had been held and a new IEP was created for him, which removed C.E.B.'s behavorial goals. E.G.B. contended that the August 2013 IEP demonstrated that the ARC had failed to abide by its statutory duties to review existing evaluation data on C.E.B. He additionally contended that Mr. Browning had violated a duty to retrieve C.E.B.'s psychiatric records from various private facilities.

In Ms. Meehan's response to E.G.B.'s amended response/reply, she noted that E.G.B. had failed to address his claims against her for violations of his constitutional rights, failure to implement a disciplinary code, and failure to report. Accordingly, she contended that those claims should be deemed waived. Ms. Meehan contended that E.G.B.'s arguments concerning the quality of C.E.B.'s IEP in effect at the time of the alleged incident were unpersuasive. For one, arguments about the sufficiency of C.E.B.'s ARC were not grounded in the complaint or first amended complaint. Additionally, the actions of an ARC in setting educational goals for students are, by their very nature, discretionary. Further, there was no

mandate in either the April 2013 IEP or the August 2013 IEP for C.E.B. requiring that C.E.B. receive "special supervision."

On March 22, 2017, the circuit court entered an order denying Appellants' motions for summary judgment. The order contained no factual findings or grounds for the denial. E.G.B.'s motion for summary judgment was denied on April 5, 2017.

This appeal followed.

II. ANALYSIS

Before we can reach the merits of this appeal, we must determine whether it is properly before this Court. "It is a well-settled principle that an order denying a dispositive motion is interlocutory and therefore generally not appealable." *Chen v. Lowe*, 521 S.W.3d 587, 590 (Ky. App. 2017). This general rule, however, is not without exceptions. "The Court of Appeals has jurisdiction to review interlocutory orders of the Circuit Court in civil cases, but only as authorized by rules promulgated by the Supreme Court." KRS 22A.020(2). A circuit court's "denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' . . . notwithstanding the absence of a final judgment." *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S.Ct. 2806, 2817, 86 L.Ed.2d 411 (1985); *accord Breathitt Cty. Bd. of Educ. v. Prater*, 292 S.W.3d 883, 886-87 (Ky. 2009). In order for an such an order to be

appealable, "it must 'conclusively determine the disputed question. . . .'" *Id*. at 527, 105 S.Ct. at 2816 (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468, 98 S.Ct. 2454, 2457, 57 L.Ed.2d 351 (1978)).

Appellants take the position that the circuit court's order denying their motions for summary judgment effectively denied their claims of immunity, therefore giving them the immediate right to appeal to this Court. However, the circuit court made no findings or rulings on any of the issues presented in Appellants' motions for summary judgment, including whether Appellants were or were not entitled to immunity. No party to this action moved the court for findings supporting its order or requested clarification of the order. Thus, it is entirely unclear whether the circuit court determined that Appellants were not entitled to the protection of immunity as a matter of law; whether it determined that there were issues of material fact remaining, making it improper to determine Appellants' entitlement to immunity at that time; or whether it simply failed to consider the immunity issue. In sum, it cannot be said that the order conclusively determined the question of Appellants' entitlement to the protection of qualified immunity.

It appears that the circuit court simply declined to rule on the question of whether Appellants are entitled to the protection of qualified immunity. For one, during the hearing on the motions for summary judgment, the circuit court

stated that it was "not addressing qualified immunity," and proceeded to question counsel on factual matters. T.R. 2/17/17, 11:05:06 AM. Further, the circuit court dismissed all Appellants' motions for summary judgment by one order. The immunity analysis cannot be the same for each of the Appellants. As superintendent, Mr. Jett had different duties than Mr. Browning and Ms. Meehan had in their roles as principals. Mr. Browning and Ms. Meehan served as principal of Chavies at different times and, accordingly, were faced with different circumstances, which may have triggered different duties.

Appellants raised a multitude of issues in their motions for summary judgment several of which did not turn on the issue of immunity. The circuit court's blanket denial failed to identify whether it was addressing the immunity question, which it had previously indicated it was not considering at the summary judgment hearing. "[A]n appellate court reviewing an interlocutory appeal of a trial court's determination of a defendant's immunity from suit is limited to the specific issue of whether immunity was properly denied." *Baker v. Fields*, 543 S.W.3d 575, 578 (Ky. 2018). The nature of the order in combination with the circuit court's oral statements at the hearing leave us to believe that for whatever reason, the circuit court left the issue of qualified immunity unresolved. We are not a trial court; we are an appellate court. We review decisions by trial courts. In this instance, it does not appear that the trial court addressed the immunity

question. "We will not overstep our bounds by attempting to make findings of fact on [the issues of immunity] so we can determine an immunity question that the circuit court has not yet fully addressed." *Chen*, 521 S.W.3d at 591.

As the circuit court's order failed to resolve the immunity question, it is an interlocutory order and not subject to this Court's review. *Id.* at 590.[13] Accordingly, we find it necessary to remand to the circuit court with instructions to make specific findings and rulings on Appellants' entitlement to immunity.

III. CONCLUSION

Based on the above, we REMAND this matter to the Perry Circuit Court. On remand, the circuit court shall clarify the effect of its order on the question of qualified immunity. To the extent that the circuit court did not address qualified immunity in its order, it is ordered to do so.

ALL CONCUR.

[13] *See also Broughton v. Russell*, No. 2009-CA-001753-MR, 2010 WL 4320436, at *2 (Ky. App. Oct. 29, 2010); *Hyden-Leslie Water Dist. v. Jessie Hoskins & Perry Const., Inc.*, No. 2010-CA-000599-MR, 2011 WL 919818, at *2 (Ky. App. Mar. 18, 2011); *Adair Cty. v. Stearman*, No. 2010-CA-001953-MR, 2011 WL 4103137, at *2 (Ky. App. Sept. 16, 2011); *Nelson Cty. Bd. of Educ. v. Haun*, No. 2015-CA-000309-MR, 2016 WL 3962286 (Ky. App. July 22, 2016); *Johnston v. Roach*, No. 2015-CA-000867-MR, 2018 WL 297327 (Ky. App. Jan. 5, 2018); *Hembree v. Bowman*, No. 2016-CA-000260-MR, 2017 WL 4082893 (Ky. App. Sept. 15, 2017), *disc. rev. denied*, No. 2017-SC-000618-D (Ky. Mar. 14, 2018); *Perry Cty. Ambulance Auth., Inc. v. Noble*, No. 2016-CA-000956-MR, 2017 WL 2608800 (Ky. App. June 16, 2017), *disc. rev. denied*, No. 2017-SC-000337-D (Ky. Mar. 14, 2018).

BRIEFS AND ORAL ARGUMENT
FOR APPELLANT,
REGINA MEEHAN:

John G. McNeill
Elizabeth A. Deener
Lexington, Kentucky

BRIEFS AND ORAL ARGUMENT
FOR APPELLANT,
JONATHAN JETT:

Jonathan Shaw
Paintsville, Kentucky

Barbara A. Kriz
Lexington, Kentucky

BRIEFS AND ORAL ARGUMENT
FOR APPELLANT,
CHARLES E. BROWNING, JR.:

Jason A. Snyder
Cincinnati, Ohio

BRIEFS AND ORAL ARGUMENT
FOR APPELLEE:

Lori M. Reynolds
Louisville, Kentucky