

Commonwealth Of Kentucky

Court of Appeals

NO. 2000-CA-000056-MR

WILLIAM SLOAS

APPELLANT

ON REMAND FROM THE SUPREME COURT OF KENTUCKY
NO. 2001-SC-1061-D

v. APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 99-CI-90007

ROWAN COUNTY, KENTUCKY; DON HALL,
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY
AS ROWAN COUNTY JAILER; AND PAUL HENDERSON
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY
AS ROWAN COUNTY DEPUTY JAILER

APPELLEES

OPINION
AFFIRMING IN PART, REVERSING IN PART
AND REMANDING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; GUIDUGLI AND JOHNSON, JUDGES.

JOHNSON, JUDGE: William Sloas has appealed from a summary judgment entered by the Rowan Circuit Court on December 6, 1999, which granted the appellees' (Rowan County, Don Hall, and Paul

Henderson) motion for summary judgment on the grounds that the doctrines of sovereign immunity and/or official immunity barred Sloas's negligence claims against them. We affirm the summary judgment granted to Rowan County and the summary judgment granted to Hall and Henderson on the claims against them in their official capacity; but having concluded in light of Yanero v. Davis,¹ that summary judgment was improper with respect to the negligence claims against Hall and Henderson in their individual capacities, we reverse in part and remand for further proceedings.

Pursuant to authority granted by KRS² 441.125, the Rowan County Jail operated a "Class D Work Program." This program allowed eligible inmates to leave the jail facility to perform community service work for various government agencies. Rowan County Jailer Don Hall and Deputy Jailer Paul Henderson were in charge of supervising the work program. Hall and Henderson determined which inmates were allowed to work for which agencies based on factors such as the inmate's work experience, physical and mental ability, and the needs of the particular agency. Henderson was in charge of transporting the inmates to the various work locations, where he would then

¹ Ky., 65 S.W.3d 510 (2001).

² Kentucky Revised Statutes.

assign specific tasks.³ Hall did not normally decide which task any particular inmate would perform on any given day and rarely visited the work sites.

While Sloas was serving a sentence in the Rowan County Jail for driving under the influence, fourth offense,⁴ and possession of a controlled substance in the first degree,⁵ he volunteered to participate in the work program. On January 21, 1998, while under the supervision of Henderson, Sloas and other inmates were assigned the task of clearing brush that had grown along side a county road. This particular project involved cutting trees with chain saws and processing the brush through a chipper machine. Sloas suffered a broken leg when a tree which had been cut by Carl Lewis, a fellow inmate, fell on him. Sloas was taken from the work site and treated for his injuries. His medical bills were paid by the Rowan County Fiscal Court until April 21, 1998, when Sloas was last seen by his doctors. Sloas was released from the Rowan County Jail on February 28, 1998.

On January 20, 1999, Sloas filed a complaint in Rowan Circuit Court, naming as defendants Rowan County; Jailer Hall, both individually and in his official capacity as jailer; and

³ Typical jobs for the inmates included manual labor tasks such as collecting trash from the roadways, mowing certain locations, and clearing roadways of brush.

⁴ KRS 189A.010.

⁵ KRS 218A.1415.

Deputy Jailer Henderson, both individually and in his official capacity as deputy jailer. In his complaint, Sloas claimed (1) that Hall and Henderson were negligent by failing to ensure that the inmates were properly qualified to perform the tasks they were assigned, properly instructed in how to perform the tasks, and properly supervised while performing the work; (2) that both Hall and Rowan County were vicariously liable for Henderson's negligent supervision of the inmates at the work site; and (3) that all of the named defendants were vicariously liable for the negligence of inmate Carl Lewis. Sloas sought both compensatory and punitive damages.

In addition to denying any negligence on their part, Rowan County, Hall, and Henderson filed a motion for summary judgment on August 2, 1999, arguing that all of Sloas's claims were barred by the doctrines of sovereign and/or official immunity. On December 6, 1999, the trial court granted the motion for summary judgment, stating that sovereign and/or official immunity served as a complete bar to Sloas's claims and that the doctrine of respondeat superior was inapplicable. Sloas then appealed to this Court.

On November 21, 2001, this Court affirmed the trial court's dismissal of Sloas's claims in a 2-1 decision.⁶ The

⁶ The Majority summarized its holding by stating that "absent an express waiver, sovereign immunity is a bar to Sloas'[s] claims against Rowan County. Official immunity also bars Sloas'[s] claims against Hall and Henderson."

panel was in agreement that sovereign immunity barred Sloas's claims against Rowan County, that official immunity barred Sloas's claims against Hall and Henderson in their official capacities, and that vicarious liability was not applicable against either Rowan County or Hall and Henderson in their official capacities. The Dissent took the position that official immunity did not preclude Sloas's claims against Hall or Henderson in their individual capacity.⁷

Sloas then filed a motion for discretionary review with the Supreme Court of Kentucky. While that motion was pending, the Supreme Court decided Yanero, supra.⁸ On August 14, 2002, Sloas's motion for discretionary review was granted. The Supreme Court then vacated this Court's prior decision and remanded the case with instructions to reconsider the matter in light of the Yanero decision. We now apply the principles of Yanero to the facts of the case at bar.

Summary judgment is only proper "where the movant shows that the adverse party could not prevail under any circumstances."⁹ The trial court must view the record "in a

⁷ The Dissent opined that summary judgment was improper and that fact-finding was necessary to determine the alleged negligence of Hall and Henderson. "[O]fficial immunity does not bar Sloas'[s] claims against Hall and Henderson individually for their alleged personal negligence or for their alleged vicarious liability."

⁸ Yanero was final on February 21, 2002.

⁹ Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991) (citing Paintsville Hospital Co. v. Rose, Ky., 683 S.W.2d 255 (1985)).

light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.”¹⁰ However, “a party opposing a properly supported summary judgment motion cannot defeat that motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of material fact requiring trial.”¹¹ This Court has previously stated that “[t]he 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. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue” [citations omitted].¹²

Sloas’s claims of negligence against Rowan County are barred under the doctrine of sovereign immunity.¹³ A county, as a political subdivision of the Commonwealth, is immune from tort liability unless immunity has been expressly waived by the

¹⁰ Steelvest, 807 S.W.2d at 480 (citing Dossett v. New York Mining & Manufacturing Co., Ky., 451 S.W.2d 843 (1970)).

¹¹ Hubble v. Johnson, Ky., 841 S.W.2d 169, 171 (1992)(citing Steelvest, supra, at 480).

¹² Scifres v. Kraft, Ky.App., 916 S.W.2d 779, 781 (1996).

¹³ Yanero, 65 S.W.3d at 526 (holding that “[t]o the extent that extending sovereign immunity to counties can be justified, it is because they are local governments authorized and recognized as such by the Constitution. Hence, their characterization as ‘political subdivisions of the state’ has a constitutional foundation”)[citations omitted][emphasis original].

Legislature.¹⁴ Further, the participation of a county in a self-insurance fund cannot by itself constitute a waiver of sovereign immunity.¹⁵ Therefore, since sovereign immunity has not been expressly waived by statute and because Rowan County's participation in the self-insurance fund does not by itself rise to the level of a waiver, Sloas's negligence claims against Rowan County are barred by the doctrine of sovereign immunity. Accordingly, the trial court's granting of summary judgment to Rowan County on Sloas's claims is affirmed.

We next turn to Sloas's negligence claims against both Hall and Henderson in their official capacities as jailer and deputy jailer, respectively. In Commonwealth, Board of Claims v. Harris,¹⁶ decided on the same day as Yanero, our Supreme Court explained the practical effect of bringing suit against a jailer in his official capacity as it relates to immunity issues:

The jailer is a constitutionally elected officer of the county under Section 99 of the Kentucky Constitution. And, the jailer reports to the fiscal court, which oversees the jail's operation and budget. Thus, the official capacity claims are in essence claims alleging negligent operation of the jail and are, therefore, claims against the county. . . . This cloaks the jailer, in

¹⁴ See Franklin County, Ky. v. Malone, Ky., 957 S.W.2d 195, 203 (1997) (holding that "it is well settled that in the absence of waiver, the county is immune from tort liability") (overruled on other grounds Yanero, supra).

¹⁵ Id. at 203-04.

¹⁶ Ky., 59 S.W.3d 896 (2001).

his official capacity, with the county's sovereign immunity [citations omitted].¹⁷

Hence, Sloas's claims of negligence brought against Hall and Henderson in their official capacities are barred under the doctrine of official immunity and the trial court's granting of summary judgment on these claims is affirmed.

Sloas also alleged in his complaint that Hall and Rowan County should be held vicariously liable for Henderson's alleged negligent supervision of the work site where Sloas was injured, and that Rowan County, Hall, and Henderson should all be held vicariously liable for the alleged negligence of Carl Lewis, the inmate who cut the tree that fell on Sloas. As we discussed previously, Rowan County enjoys sovereign immunity and therefore cannot be held vicariously liable for the alleged negligence of either Hall or Lewis. Similarly, to the extent Sloas's claims against Hall and Henderson are premised solely on their representative or official status, and to the extent Sloas has failed to allege any personal wrongdoing on their part, the doctrine of vicarious liability does not apply.¹⁸ Therefore, we affirm the trial court's granting of summary judgment on all of

¹⁷ Id. at 899. See also Yanero, 65 S.W.3d at 521 (holding that "[o]fficial immunity can be absolute, as when an officer or employee of the state is sued in his/her representative capacity, in which event his/her actions are included under the umbrella of sovereign immunity . . .").

¹⁸ See Yanero, 65 S.W.3d at 531; and Board of Trustees of University of Kentucky v. Hayse, Ky., 782 S.W.2d 609, 615 (1989)(holding that "[o]fficials have no vicarious liability for acts of subordinates in which they are not directly involved, i.e., bear no personal responsibility").

Sloas's claims of vicarious liability against Rowan County and on his claims of vicarious liability against Hall and Henderson to the extent that the claims are based on Hall's and Henderson's official capacities.

Sloas's only remaining claims are against Hall and Henderson in their individual capacities. We conclude that there is a genuine issue as to material facts concerning allegations of personal wrongdoing on the part of both Hall and Henderson which preclude the granting of summary judgment on the claims against them in their individual capacities.

We once again turn to Yanero, where the Supreme Court stated:

[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 [emphases added] [citations omitted].¹⁹

The Court went on to explain how "bad faith" can be shown, thereby removing an official's conduct from the protection of qualified official immunity:

¹⁹ Yanero, 65 S.W.3d at 522.

Thus, in the context of qualified official immunity, "bad faith" can be predicated on a violation of a constitutional, statutory, or other clearly established right which a person in the public employee's position presumptively would have known was afforded to a person in the plaintiff's position, i.e., objective unreasonableness; or if the officer or employee willfully or maliciously intended to harm the plaintiff or acted with a corrupt motive.²⁰

In the case sub judice, we believe there are genuine issues of material fact with regard to whether Sloas's statutory rights were violated in a manner that would tend to show "bad faith" on the part of Hall and Henderson, thereby rendering summary judgment improper. The provisions under KRS 441.125 that were in effect on the day Sloas was injured provided in part:

- (2) Pursuant to a written policy adopted by the fiscal court on the advice of the jailer, the jailer may permit certain prisoners to work on community service related projects. Before a prisoner is permitted to work in this type project, the county judge/executive or his designee shall sign his approval to the prisoner's participation.
- (3) In determining which prisoners may be worked on community service related projects and the nature of work to which a prisoner may be assigned, the jailer and the county judge/executive shall consider the physical and mental ability of the prisoner and the

²⁰ Id. at 523.

security of the jail and the general public. No prisoner shall be assigned to unduly hazardous work that would endanger the life or health of the prisoner or others.²¹

Therefore, the Legislature has authorized a jailer to operate a community work program for inmates, but the Legislature has specifically required the jailer to "consider the physical and mental ability of the prisoner" and it has specifically prohibited the jailer from assigning an inmate to "unduly hazardous work that would endanger the life or health of the prisoner or others." Thus, an inmate participating in the community work program has been given a statutory right not to be assigned to work that is unduly hazardous. This statutory right includes the jailer not subjecting the inmate to endangerment of his life or health by the work of another prisoner. The jailer must also properly consider the physical and mental abilities of all the prisoners who are working in the program and the nature of the work assigned to each prisoner. As Yanero makes clear, a violation of one of these statutory rights could lead to a finding of "bad faith" on the part of the jailer, which would preclude the protection of qualified official immunity.

In the instant case, Sloas has alleged facts which are properly left to the fact-finder in determining whether the

²¹ Amended effective July 14, 2000.

"good faith" element has been satisfied. For example, Sloas has alleged that both Hall and Henderson were personally negligent by assigning work to the inmates that they were not qualified to perform and by failing to properly supervise the work area.²² In addition, Hall stated in his deposition that he had never prepared a written policy concerning community service workers, nor was he aware of any written policy concerning the work program.

The facts of the case at bar have an interesting similarity to those presented in Yanero:

Yanero's cause of action against Davis and Becker is essentially one for negligent supervision. Teachers assigned to supervise juveniles during school-sponsored curricular or extracurricular activities have a duty to exercise that degree of care that ordinarily prudent teachers or coaches engaged in the supervision of students of like age as the plaintiff would exercise under similar circumstances. [emphasis added].²³

The Supreme Court in Yanero went on to hold that summary judgment in favor of Davis and Becker was improper since there remained genuine issues of material fact as to whether the

²² Among other things, Sloas alleges that Hall should have realized that the inmates were not capable of operating the equipment safely since another inmate had previously cut his leg with a chain saw. Sloas also claims that Henderson was not supervising the inmates when he was injured and was instead talking to neighbors.

²³ Yanero, 65 S.W.3d at 529.

defendants had breached their duty to Yanero.²⁴ Similarly, summary judgment was erroneously granted with respect to Sloas's claims against Hall and Henderson in their individual capacity, since there remain genuine issues of material fact as to whether Hall and Henderson breached their duty to properly assign the work to the inmates, to supervise the work of the inmates, and to provide a sufficiently safe work area. Therefore, we reverse the trial court's granting of summary judgment on Sloas's claims against Hall and Henderson in their individual capacity and remand this matter for further proceedings.

Accordingly, the judgment of the Rowan Circuit Court is affirmed in part and reversed in part and this matter is remanded for further proceedings consistent with this Opinion.

EMBERTON, CHIEF JUDGE, CONCURS.

GUIDUGLI, JUDGE, CONCURS IN RESULT ONLY.

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²⁴ Davis and Becker were two of Yanero's coaches on his high school baseball team.