

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001393-MR

MATTHEW BARRETT

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 00-CI-00367

CARTER COUNTY BOARD OF EDUCATION;
AND DWIGHT BLAIR

APPELLEES

OPINION

VACATING AND REMANDING

** ** * * *

BEFORE: BUCKINGHAM, McANULTY, AND PAISLEY, JUDGES.

McANULTY, JUDGE. Matthew Barrett (hereinafter appellant) appeals the dismissal pursuant to CR 12 of his complaint against the Carter County Board of Education and Dwight Blair, individually and in his official capacity. The complaint alleged that Blair was negligent in his care and supervision of appellant during class, as a result of which appellant was injured by a fall on a wet floor. The complaint also alleged further negligence

because Blair failed to obtain proper and necessary medical treatment. On appeal, appellant argues his complaint stated a claim against the appellees which was not barred by official immunity. We affirm in part, and vacate in part.

Under CR 12, a court should not grant the motion to dismiss unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of the claim. Pari-Mutuel Clerks' Union v. Kentucky Jockey Club, Ky., 551 S.W.2d 801, 803 (1977). When considering a motion to dismiss under CR 12, the pleadings should be liberally construed in a light most favorable to the plaintiff, and all allegations in the complaint should be taken to be true. Gall v. Scroggy, Ky. App., 725 S.W.2d 867, 869 (1987).

Under this standard, the trial court erred in dismissing the complaint against the teacher, Blair, in his individual capacity, because there are facts which appellant may prove which would support a claim. Public employees enjoy only qualified official immunity. Yanero v. Davis, Ky., 65 S.W.3d 510, 522 (2001). Qualified official immunity applies to the negligent performance by a public employee of discretionary acts or functions, in good faith and within the scope of the employee's authority. Id. For the negligent performance of a ministerial act, however, a public employee is afforded no immunity from tort liability. Id.

Appellees contended below and on appeal that the teacher was performing a discretionary function in supervising the class. Appellant argues there were not sufficient facts in the pleadings to determine that the duties of Blair were discretionary rather than ministerial. We believe that it was error for the trial court to conclude on the facts alleged that the teacher was performing a discretionary act. In Williams v. Kentucky Dept. of Educ., Ky., 113 S.W.3d 145, 150 (2003), the Supreme Court stated that the teacher's duty to supervise students is a ministerial act rather than discretionary, because it involves the enforcement of rules and regulations. Therefore, unless Blair can show that his duties were more than supervision and instruction, he can be held liable for the negligent performance of a ministerial act. There are facts upon which appellant may prevail if proved, and the dismissal of the case against Blair was not proper.

The Carter County Board of Education is afforded governmental immunity, and cannot be sued for negligence when performing a governmental function. Yanero, 65 S.W.3d at 527. Appellant states on appeal that he does not contend that the trial court erred in ruling that the school board itself was entitled to immunity. Therefore, we affirm that portion of the order dismissing. We vacate the dismissal of the claim against

Dwight Blair in his individual capacity, and remand for further proceedings consistent with this opinion.

ALL CONCUR.

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