

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2006-CA-002157-MR

RALPH JONES

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE JOHN L. ATKINS, JUDGE  
ACTION NO. 04-CI-01062

KENTUCKY BOARD OF CLAIMS;  
COMMONWEALTH OF KENTUCKY,  
JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF KENTUCKY STATE POLICE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR AND KELLER, JUDGES; GRAVES,<sup>1</sup> SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Ralph Jones appeals from an opinion and order of the Christian Circuit Court affirming a determination by the Board of Claims that State Trooper Lonnie Bell did not negligently injure Jones in the course of handcuffing him in connection with a DUI arrest. We affirm.

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<sup>1</sup> Senior J. William Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On January 4, 2000, Trooper Jones arrested Bell for driving under the influence of alcohol. In the course of arresting Jones, Bell handcuffed Jones behind his back. Jones had previously incurred a shoulder injury in March 1999.

On January 3, 2001, Bell filed a claim with the Kentucky Board of Claims alleging that Trooper Bell had used excessive force in arresting him and, as a result, aggravated the previously incurred shoulder injury. On December 16, 2003, an evidentiary hearing was held before the Hearing Officer. On May 21, 2004, the Hearing Officer issued his Recommended Findings of Fact, Conclusions of Law, and Recommended Order in which he determined that Trooper Bell had used standard handcuffing procedures; that Jones had not warned Bell that normal handcuffing procedures may aggravate a prior injury; that Bell did not use excessive force in handcuffing Jones; that Bell did not breach any duty owed to Jones; and that Jones' claim for damages should be denied.

On June 21, 2004, the Board of Claims issued a Final Order adopting in full the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer. Jones appealed the Board's decision to the Christian Circuit Court, which entered an Opinion and Order affirming the Board's decision on September 15, 2006. This appeal followed.

KRS<sup>2</sup> 44.140 controls appeals taken from the Board of Claims to the circuit court and provides that, upon appeal, the circuit court is limited to determining: (1) whether the Board acted in excess of its powers; (2) whether the award was acquired by

<sup>2</sup> Kentucky Revised Statutes.

fraud; (3) whether the award conformed with the provisions of KRS 44.070 to 44.160; and (4) whether the Board's findings of fact support the award. KRS 44.140(5).

This court, in turn, reviews upon appeal only the matters subject to review by the circuit court and errors of law arising in the circuit court. KRS 44.150.

Ultimately, when we review a decision rendered by the Board of Claims, we will not disturb its findings of fact if the findings are supported by substantial evidence. *Department For Human Resources v. Redmon*, 599 S.W.2d 474, 476 (Ky.App. 1980). Substantial evidence is defined as “evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable men.”

*Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972).

Furthermore, if the Board's findings of fact and conclusions of law are not clearly erroneous, then we are prohibited from substituting our judgment for that of the Board's.

*Redmon at 476*. However, we review questions of law de novo. *Bob Hook Chevrolet Isuzu, Inc. v. Commonwealth, Transportation Cabinet*, 983 S.W.2d 488, 490 (Ky. 1998).

As noted by Jones, the Board of Claims was established, as relevant to this case, “to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, . . . or any of its officers, agents, or employees while acting within the scope of their employment . . .” KRS 403.070(1). Accordingly, this is a negligence case.

It is well-established that tort liability for negligence requires the plaintiff to establish: (1) a duty; (2) a breach of that duty; (3) proximate causation; and (4) damages.

*Illinois Central R.R. v. Vincent*, 412 S.W.2d 874, 876 (Ky. 1967); *Helton v. Montgomery*, 595 S.W.2d 257, 258 (Ky.App. 1980). See also *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 247 (Ky. 1992). The failure to prove any requisite element is fatal to a negligence claim. *Illinois Cent. R.R.*, 412 S.W.2d at 876 ( quoting *Warfield Natural Gas Co. v. Allen*, 248 Ky. 646, 59 S.W.2d 534 (1933)). Duty presents a question of law, while breach and injury are questions of fact for the fact-finder to decide. See *Pathways, Inc. v. Hammons*, 113 S.W.3d 85, 89 (Ky. 2003). Proximate causation presents a mixed question of law and fact. *Id.*

With the foregoing standards in mind, we now turn to the findings of fact and conclusions of law of the Hearing Officer as adopted by the Board:

#### FINDINGS OF FACT

On January 4, 2000, Claimant Ralph Jones [] was arrested for DUI by Trooper Lonnie Bell []. At the time of the arrest, Bell handcuffed Jones with his arms behind his back. Jones alleges that he suffered a tear to the rotator cuff in his right shoulder due to the unnecessarily rough manner in which Bell handcuffed him. The testimony of Jones and Bell conflicts as to whether Bell used excessive force in handcuffing Jones. The Hearing Officer credits the testimony of Bell that he used standard handcuffing procedure on Jones. Moreover, it was undisputed that Jones did not make Bell aware that he had a medical condition justifying any deviance from standard handcuffing methods. It was also undisputed that Jones did not complain to Bell of any pain or discomfort associated with being handcuffed and that he did not request that the handcuffs be removed or medical attention sought.

#### CONCLUSIONS OF LAW

A claimant in the Board of Claims may recover injuries suffered as a proximate result of negligence on the part of the

Commonwealth or any of its agents acting within the scope of their employment. *See* KRS 44.070(1). In this case, Jones' negligence claim is tantamount to a claim that Bell used excessive force in making the arrest and handcuffing him. An officer may be held responsible for injuries that result from use of excessive force against an arrestee. *See Lawson v. Burnett*, 471 S.W.2d 726, 729 (Ky. 1971); *see also* KRS 431.025(3) ("No unnecessary force of violence shall be used in making an arrest.") There are no Kentucky precedents directly addressing what constitutes excessive force in the use of handcuffs. However, there are a number of instructive precedents from the Sixth Circuit involving allegations of excessive force in the Fourth Amendment context. These cases "allow the plaintiff to get to a jury upon showing that officers handcuffed the plaintiff excessively and unnecessarily tightly and ignored the plaintiff's pleas that the handcuffs were too tight." *Burchett v. Kiefer*, 310 F.3d 937, 944-45 (6<sup>th</sup> Cir. 2002) *citing* *Kostrzewa v. City of Troy*, 247 F.3d 633, 641 (6<sup>th</sup> Cir. 2001) and *Martin v. Heideman*, 106 F.3d 1308, 1310, 1313 (6<sup>th</sup> Cir. 1997). Accordingly, in *Burchett, supra*, the court found that there could be no constitutional violation where the arrestee did not complain or advise the arresting officers that the handcuffs were too tight, leaving the officers unaware that there might be a problem. *Id.* at 945. Absent notice of a possible problem, it would not be possible to infer that the officer acted unreasonably. *Kostrzewa*, 247 F.3d 639 ("In determining whether excessive force was used, courts must ask whether the officer's actions, in light of the totality of the circumstances, were objectively reasonable.")

Likewise, in this case, there is no evidence that Jones made any sort of verbal comment or complaint that would have placed Bell on reasonable notice that the handcuffs were being applied in a manner that could possibly cause pain or injury to Jones. Thus, the evidence in the record suggests that Bell's actions in using standard handcuffing procedure on Jones were reasonable and, therefore, that the force used was not excessive. In sum, the evidentiary record does not support a finding that Bell negligently breached any duty to Jones.

Because the Hearing Officer finds that there is no liability in this case, there is no need to reach the other contested issues regarding the actual cause of Jones' shoulder injuries or whether he has suffered any damages in the form of lost wages.

### RECOMMENDED ORDER

Based on the foregoing findings of fact and conclusions of law, the Hearing Officer recommends that the Board issue an Order finding no liability on the part of the Respondent and dismissing the Claimant's claim.

The findings of fact by the Board dispositive of Jones' claim - that Trooper Bell used normal handcuffing procedures, that Jones gave no warning of the need to take precautions in handcuffing him, that Bell did not use excessive force in handcuffing Jones, and that Bell breached no duty owed to Jones in handcuffing him - are supported by substantial evidence in the record. Evidence and testimony provided at the December 16, 2003, evidentiary hearing support the foregoing findings and, accordingly, those findings are conclusive upon our review. Those findings, in turn, establish that the Board properly denied Jones' claim for damages.

In overlapping arguments, however, Jones contends that the Board applied the wrong standard for the duty of care Bell owed to Jones by applying an excessive force standard rather than a negligence standard; that excessive force is an intentional tort standard and not a negligence standard; and that there are jurisdictional concerns with the standard applied by the Board because it has jurisdiction over negligence cases only, not intentional tort cases. We disagree.

We begin by noting that in his original claim to the Board Jones identified the incident at issue as being that Trooper Bell “handcuffed me using excessive force, causing my injury to be aggravated.” The complaint further stated that Bell was at fault because he “negligently handcuffed me in a manner that caused my shoulder injury to be aggravated.” Implicit in this statement is that excessive force was used in the handcuffing procedures. Thus Jones, himself, initially interjected excessive force as the standard of care at issue.

Further, we believe that the Board properly identified the duty not to use excessive force, under the totality of the circumstances, as the duty of care Bell owed to Jones. This is the statutory duty imposed under KRS 431.025(3) (No unnecessary force or violence shall be used in making an arrest), and Jones fails to identify any alternative standard other than “a showing of negligence is required and nothing more.” However, as stated above, an element of negligence is the breach of a duty. Under the facts of this case, we believe the duty Trooper Bell owed to Jones was not to use excessive force under the totality of the circumstances. Further, we believe the Board properly referred to the 42 U.S.C.A. § 1983 case *Burchett v. Kiefer, supra*, for guidance in the area of excessive force. In summary, we believe that the Board used the proper standard of care in its review.

Moreover, we do not believe that the Board used an intentional tort standard in its review. The Board's decision, as adopted from the recommendation of the Hearing Officer, makes clear that it was employing a negligence standard, not an

intentional tort standard. We reject Jones' arguments to the contrary. We also reject his jurisdictional argument based upon this premise.

Finally, based upon our discussion above, we need not address the causation arguments raised by Jones.

For the foregoing reasons the judgment of the Christian Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Willie E. Peale, Jr.  
Frankfort, Kentucky

BRIEF FOR APPELLEE DEPARTMENT  
OF STATE POLICE

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