

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-003083-MR

MICHAEL A. YANERO AND
SHERI L. YANERO, AS PARENTS AND
NEXT FRIENDS OF RYAN YANERO, A MINOR

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOHN POTTER, JUDGE
ACTION NO. 97-CI-005972

ALAN DAVIS; JEFFREY BECKER;
ROBERT STEWART; KENTUCKY HIGH
SCHOOL ATHLETIC ASSOCIATION, AND
JEFFERSON COUNTY BOARD OF EDUCATION,
AND RYAN COKER (A MINOR)

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: KNOPF, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Michael A. Yanero and Sheri L. Yanero, as parents and next friends of Ryan Yanero, a minor (collectively referred to as "appellants"), bring this appeal from a December 2, 1998, summary judgment of the Jefferson Circuit Court. We affirm.

The facts are these: On April 17, 1997, Ryan Yanero was participating in batting practice in the Waggener High School gymnasium. Ryan played on Waggener's Junior Varsity Baseball

Team. During batting practice, Ryan was struck in the temporal area of his head by a baseball pitched by a teammate, co-appellee Ryan Coker. Ryan Yanero was not wearing a batting helmet and suffered traumatic brain injury. Appellants filed the instant action in the Jefferson Circuit Court against two junior varsity baseball coaches--Alan Davis (Davis) and Jeffrey Becker (Becker), Waggener High School's Athletic Director--Robert Stewart (Stewart), the Jefferson County Board of Education (Board of Education), and the Kentucky High School Athletic Association (KHSAA). Therein, appellants alleged various theories of negligence against appellees. Appellees answered and filed a third-party complaint against the pitcher, Coker. Appellees filed separate motions for summary judgment upon the grounds of immunity. On December 2, 1998, the Jefferson Circuit Court concluded that appellees were entitled to "sovereign immunity" and granted their motions for summary judgment. This appeal followed.

Appellants contend that the circuit court committed reversible error by granting appellees' motions for summary judgment. Summary judgment is appropriate when there exists no material issue of fact and movants are entitled to judgment as a matter of law. Ky. R. Civ. P. 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). In the case at hand, we agree with the circuit court that appellees are cloaked with immunity and are shielded from liability in the instant action. We believe it well established that the Board of Education is an arm of state government and entitled to sovereign immunity. Clevinger v. Board of Education, Ky., 789 S.W.2d 5

(1990). We also think KHSAA is clearly an agency of the Kentucky Board of Education and thus is likewise cloaked with sovereign immunity. Ky. Rev. Stat. 156.070(2) and .035. Under the precepts of Franklin County v. Malone, Ky., 957 S.W.2d 195 (1998), we view public education as a traditional role of government; consequently, as Davis, Becker, and Stewart were school employees undeniably acting within the scope of their duties, we are bound to conclude they are also entitled to immunity. Upon the whole, we are of the opinion that appellees were shielded by immunity and that summary judgment was proper.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

SCHRODER, JUDGE, CONCURS.

KNOPF, JUDGE, CONCURS IN RESULT.

BRIEFS FOR APPELLANTS:

A. Thomas Johnson
Louisville, KY

BRIEF FOR APPELLEE KHSAA:

Danny C. Reeves
Roger G. Wright
Lexington, KY

BRIEF FOR APPELLEES DAVIS,
BECKER, STEWART, AND BOARD OF
EDUCATION:

Byron E. Leet
Steven L. Snyder
Daniel G. Brown
Louisville, KY

BRIEF FOR APPELLEE COKER:

William K. Oldham
Louisville, KY