RENDERED: SEPTEMBER 16, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001953-MR

ADAIR COUNTY, KENTUCKY; AND
WILLIAM KNIGHT, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS THE
ADAIR COUNTY REGIONAL CORRECTIONAL
CENTER JAILER — APPELLANTS

v.

APPEAL FROM METCALFE CIRCUIT COURT
HONORABLE PHIL PATTON, JUDGE
ACTION NO. 07-CI-00053

JASON STEARMAN AND
LARRY MAHAFFEY — APPELLEES

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: DIXON, LAMBERT AND VANMETER, JUDGES.

DIXON, JUDGE: Appellants Adair County, Kentucky, and William Knight, individually and in his official capacity as the Adair County Regional Correctional Center (ACRCC) Jailer, appeal from an order of the Metcalfe Circuit Court

denying their motion for summary judgment. We conclude that this appeal is taken from an interlocutory order and, therefore, must be dismissed.

In 2006, Appellee Jason Stearman participated in a Class D felon community-related work release program while he was in the custody of ACRCC. On several occasions Stearman was released to perform work at a small dog rescue facility owned by Appellee, Larry Mahaffey and his wife. Apparently, Mahaffey, a state highway employee, frequently signed out inmates to work on highway department projects and at the dog rescue facility. On July 1, 2006, Stearman sustained injuries to his head and arm while on Mahaffey's premises. Stearman claimed he was injured while using a chainsaw to cut down a tree. However, Mahaffey contended that the injuries were the result of Stearman's unauthorized use of an ATV.

In April 2007, Stearman filed a personal injury action in the Metcalfe Circuit Court against Adair County, William Knight, individually and in his official capacity as the ACRCC Jailer, and Mahaffey. Stearman claimed various violations of the Kentucky Department of Corrections policy and procedures for use of Class D felons in community-related service programs. Specifically, Stearman alleged that ACRCC and Knight wrongfully released him to work at Mahaffey's private business that did not meet the criteria required for a work release program. Further, Stearman alleged that ACRCC failed to inspect the premises where he was sent to work and failed to properly train Mahaffey as a work supervisor.

During the course of depositions, numerous questions arose as to whether the dog rescue facility was, in fact, a nonprofit organization; whether Knight or the Class D supervisor at ACRCC confirmed that Mahaffey was authorized to take inmates to said facility; and, whether Mahaffey properly supervised inmates while on site. Further allegations arose concerning whether Stearman had been provided alcohol or had visited with his fiancée while working at the facility.

Following discovery, all parties filed motions for summary judgment. Pertinent to this appeal, the County, Knight and Mahaffey claimed that sovereign immunity and qualified immunity barred Stearman's action. A hearing was held on September 14, 2010, after which the trial court entered an order denying all motions, stating only that there were "multiple issues of genuine fact." This appeal ensued.

Citing *Rowan County v. Sloas*, 201 S.W.3d 469 (Ky. 2006), Appellants argue that because ACRCC is a county entity, it was entitled to sovereign immunity and that Jailer Knight was entitled to qualified official immunity. Further, Appellants contend that the trial court's denial of their motion for summary judgment on those grounds is reviewable pursuant to *Breathitt County Bd. of Educ. v. Prater*, 292 S.W.3d 883, 887 (Ky. 2009), wherein our Supreme Court held:

> As we observed recently in *Rowan County v. Sloas*, 201 S.W.3d 469 (Ky.2006), immunity entitles its possessor to be free "from the burdens of defending the action, not merely ... from liability." *Id.* at 474. . . . Obviously such an entitlement cannot be vindicated following a final

> judgment for by then the party claiming immunity has already borne the costs and burdens of defending the action. For this reason, the United States Supreme Court has recognized in immunity cases an exception to the federal final judgment rule codified at 28 U.S.C. § 1291. In *Mitchell v. Forsyth*, 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985), the Court reiterated its position that "the denial of a substantial claim of absolute immunity is an order appealable before final judgment." *Id.* at 525, 105 S.Ct. 2806, *citing Nixon v. Fitzgerald*, 457 U.S. 731, 102 S.Ct. 2690, 73 L.Ed.2d 349 (1982). We find the Supreme Court's reasoning persuasive, and thus agree with the Court of Appeals that an order denying a substantial claim of absolute immunity is immediately appealable even in the absence of a final judgment.

Unlike the instant case, however, the trial court in *Prater* had expressly determined the issue of immunity. *Id.* at 885. Herein, the trial court made no such ruling with regard to immunity. Perhaps, by ruling that multiple material issues of fact remain, the court may have already determined that the Appellants are not protected by statutory immunity. Nevertheless, we cannot impute such meaning to the order. We would further note that Appellants did not request further findings or clarification of the trial court's ruling. Thus, since no determination has been made regarding immunity, Appellant's appeal is interlocutory and not ripe for review.

Accordingly, this appeal is dismissed.

LAMBERT, JUDGE, CONCURS.

ENTERED: September 16, 2011 /s/ Donna L. Dixon
JUDGE, COURT OF APPEALS

VANMETER, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

VANMETER, JUDGE, DISSENTING: Respectfully, I dissent. In my view, the trial court made a ruling as to the appellants' entitlement to immunity in denying their motion for summary judgment. Under *Breathitt County Bd. of Educ. v. Prather*, 292 S.W.3d 883 (Ky. 2009), that order is properly appealable. Furthermore, I agree with appellants that they are entitled to immunity in this instance. *Bryant v. Pulaski County Det. Ctr*., 330 S.W.3d 461 (Ky. 2011); *Rowan County v. Sloas*, 201 S.W.3d 469 (Ky. 2006).

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BRIEF FOR APPELLEES:

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