

RENDERED: JUNE 3, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-001882-MR

LARRY E. WATKINS-EL

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 10-CI-00526

LADONNA THOMPSON;
STEVE HANEY; LT. WALLS;
CHRISTINA DAUGHERTY;
DAVID DYKES; AND DAWN
DECKARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, KELLER AND VANMETER, JUDGES.

VANMETER, JUDGE: Larry Watkins-El appeals *pro se* from the order by the

Franklin Circuit Court granting Appellees'¹ motion to dismiss. For the following reasons, we affirm.

At all times pertinent to this action, Watkins-El was incarcerated at Northpoint Training Center (“Northpoint”). On August 21, 2009, an inmate riot ensued at Northpoint. Following the riot, Watkins-El’s personal property was seized by Appellees, employees of Northpoint. Watkins-El filed the underlying action, alleging that the seizure of his personal property violated his constitutional rights. Appellees filed a motion to dismiss pursuant to CR² 12.02(f), in which they asserted that Watkins-El failed to state a claim upon which relief could be granted. The trial court granted Appellees’ motion to dismiss on the basis that their actions were discretionary and they were entitled to qualified official immunity. This appeal followed.

A trial court should not grant a motion to dismiss for failure to state a claim “unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim.” *James v. Wilson*, 95 S.W.3d 875, 883 (Ky.App. 2002) (citation omitted). Since the trial court is not required to make any factual findings in determining whether to grant or deny a motion to dismiss, the determination is purely a matter of law. *Id.* at 884. An appellate court reviews questions of law de novo. *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010) (citation omitted).

¹ LaDonna Thompson, Steve Haney, Christina Daugherty, David Dykes, and Dawn Deckard.

² Kentucky Rules of Civil Procedure.

On appeal, Watkins-El argues the trial court erred by granting Appellees' motion to dismiss his claim because he alleged facts supporting a claim that his constitutional rights were violated. We disagree.

As the Kentucky Supreme Court explained in *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2001),

'Official immunity' is immunity from tort liability afforded to public officers and employees for acts performed in the exercise of their discretionary functions. It rests not on the status or title of the officer or employee, but on the function performed. Official 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 Similarly, when an officer or employee of a governmental agency is sued in his/her representative capacity, the officer's or employee's actions are afforded the same immunity, if any, to which the agency, itself, would be entitled, But when 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.

Id. at 521-22. (internal citations omitted).

The trial court dismissed Watkins-El's claim based on the reasoning set forth in *Ashley v. U.S.*, 37 F.Supp.2d 1027 (W.D. Tenn. 1997). In *Ashley*, a prisoner filed a *pro se* claim against the Bureau of Prisons seeking to recover

damaged and missing personal property that was seized the day after an inmate riot occurred at the prison. *Id.* at 1029. The trial court specifically held that the internal security of a prison is left to the discretion of the prison administrators. *Id.* at 1032 (citing *Rhodes v. Chapman*, 452 U.S. 337, 349 n. 14, 101 S.Ct. 2392, 2400 n. 14, 69 L.Ed.2d 59 (1981)). Further, the court noted that the minute-to-minute decisions made during the chaotic circumstances of a riot are examples of activities requiring the exercise of discretion so as to preserve the internal order and discipline within a prison. *Ashley*, 37 F.Supp.2d at 1032 (citation omitted). The trial court granted the United States' motion to dismiss on the basis that the prison employees' actions in regards to inmates' personal property in response to a riot situation were discretionary functions afforded immunity. *Id.*

In the instant case, the conduct of the Appelles that Watkins-El alleges violated his rights was undoubtedly in response to the inmate riot at Northpoint. Similar to the facts in *Ashley*, Watkins-El's personal property was seized less than a day after the inmate riot began. We find the analysis in *Ashley* to be a proper application of the discretionary function requirement so to extend qualified official immunity to Appellees in this instance. Accordingly, the trial court did not err by granting Appellees' motion to dismiss.

The order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

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