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Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001159-MR

MARK SIETSEMA — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 12-CI-01711

JOHN ADAMS, M.D. AND
ELIZABETH WALKUP, A.R.N.P. — APPELLEES

AND NO. 2013-CA-001461-MR

MARK SIETSEMA — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 12-CI-01711

SOUTHERN HEALTH PARTNERS, INC.;
BRENDA BROWN; CHRISTINA FULK;
HEATHER KENNEDY; AND
GEORGEANN WILLIAMS — APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: KRAMER, D. LAMBERT AND STUMBO, JUDGES.

STUMBO, JUDGE: Mark Sietsema appeals from the orders of the circuit court which granted summary judgment in favor of all Appellees. We find that summary judgment was improperly granted in both appeals; therefore, we reverse and remand.

Southern Health Partners, Inc. (SHP) is a for-profit company that provides healthcare services to jails and detention centers. It is incorporated in Delaware, has its principal office in Tennessee, and provides nursing and medical services to almost 200 jails nationwide. The Hardin County Detention Center (HCDC) contracted with SHP to provide services for its inmates. In order to fulfill its contractual duties, SHP separately contracted with John Adams, M.D., to act as HCDC's medical director. Dr. Adams employed Elizabeth Walkup, ARNP.[1] SHP employs nurses and other medical personnel at HCDC, including Heather Kennedy, Brenda Brown, Georgeann Williams, and Christina Fulk.

Appellant entered HCDC in the fall of 2009. At that time he reported to the medical staff that he suffered from diverticulitis and had previously had sixteen inches of his colon removed as a consequence of the disease.

Appellant alleges on April 24, 2010, he filled out a medical request form indicating that he had been vomiting and had been constipated for almost a

[1] Advanced Registered Nurse Practitioner.

week. It is unknown what happened to this form or whether it was passed on to the correct personnel. Appellant filled out another form on May 6, 2010, indicating that he had been vomiting and feverish for the past two days. Appellant's cellmates also requested that he be given medical attention.

On May 7, Nurse Erica Thompson, who is not a party to this action, examined Appellant and documented that he complained of abdominal pain, nausea, vomiting, and fever. He also had been constipated for two days. Nurse Thompson gave Appellant nausea medication and put him on a diet of clear liquids and soups.

On May 8, Nurse Heather Kennedy examined Appellant. Appellant continued to complain of nausea and vomiting. Because Appellant still had nausea and vomiting, Nurse Kennedy contacted Nurse Brenda Brown, the HCDC Medical Team Administrator, for further instructions. Nurse Brown directed that Appellant be given nausea medication in suppository form and be placed in a medical observation unit until he ceased vomiting. His special diet was also continued.

Appellant claims he was given no further medication from May 8 to May 13. On May 13, Nurse Practitioner Elizabeth Walkup visited HCDC and examined Appellant. Appellant informed Nurse Walkup that he had been vomiting for six days and had not had a bowel movement during that time. He also informed her that he had already vomited ten to twelve times that day. Nurse Walkup attributed his condition to diverticulitis and mild dehydration. She directed that he be given ice chips to stay hydrated, nausea medication

suppositories, and antibiotics. She also instructed: "To ER if unstable or unable to tolerate fluids."

On May 14, Appellant refused his nausea medication. On May 15, he again refused his medication and indicated that the medication made him throw up. He also refused his medication on May 16. On the morning of May 17, around 4 a.m., Appellant collapsed in his cell. Nurse Georgeann Williams was on duty at the time. She called Nurse Brown for instructions. Nurse Brown directed that Appellant should be prepared for transport to the hospital, but that she wanted to examine him first. Nurse Brown did not see Appellant until 10 a.m. At that time he was transported to the Hardin Memorial Hospital. That same day Appellant was transported to the University of Louisville Hospital.[2]

Once at the University of Louisville Hospital, medical records indicate that he was placed in the ICU due to severe dehydration, a bowel obstruction, and a possible ruptured esophagus. He also developed respiratory failure and had to be intubated.

On his second day at the hospital, an exploratory laparotomy was performed which revealed multiple adhesions to the small bowel which caused an

[2] It is worth noting that even though Appellant was in a medical observation unit, the only documentation of his condition are the refusal of medication forms. There are no progress notes or other information regarding his vital signs. Also worth noting is the fact that Nurse Walkup was not contacted about Appellant's condition after her examination of him on May 13 until he was taken to the hospital. Finally, Dr. Adams was never consulted regarding Appellant's condition. Dr. Adams did not even know Appellant was in HCDC until he was told Appellant was being taken to the hospital.

obstruction. These adhesions were repaired. Appellant was discharged from the hospital on May 26. The underlying suit followed.

In the underlying action, the trial court set a deadline for the disclosure of expert witnesses. Once this disclosure date had passed, Appellant had only identified one expert, Nurse Susan Turner. In Nurse Turner's expert report, she only expressed her opinion regarding the care given to Appellant by the SHP nurses. She did not express an opinion regarding Dr. Adams and Nurse Walkup.

All of the Appellees eventually moved for summary judgment. Summary judgment was granted in favor of Dr. Adams and Nurse Walkup because Appellant did not have expert opinion regarding their roles in his injury. The court held that without an expert to testify as to their roles, he could not prove essential elements of a negligence claim, namely breach of duty and causation. As for SHP and the nurses it employed, the trial court also granted summary judgment in their favor. The court believed that they were entitled to qualified official immunity because they were state employees. The court also presented an alternative reason for granting summary judgment. It held that Appellant did not provide evidence of causation between these Appellees' acts and the injury he sustained. In other words, there was no expert opinion that SHP and its nurses caused Appellant's bowel adhesions and obstruction. This appeal followed.

> The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and

> that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. . . . "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.,* 807 S.W.2d 476, 480 (Ky. 1991). Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest,* 807 S.W.2d at 480, *citing Paintsville Hospital Co. v. Rose,* 683 S.W.2d 255 (Ky. 1985). Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . . ." *Huddleston v. Hughes,* 843 S.W.2d 901, 903 (Ky. App. 1992)[.]

Scifres v. Kraft, 916 S.W.2d 779, 781 (Ky. App. 1996).

We will first address the arguments that pertain to Dr. Adams and Nurse Walkup. This case involved alleged medical negligence. In order to prove negligence, Appellant must show "(1) a duty on the part of the defendant; (2) a breach of that duty; and (3) consequent injury." *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 247 (Ky. 1992) (citation omitted).

> The presumption of negligence "is never indulged in from the mere evidence of mental pain and suffering of the patient, or from failure to cure, or poor or bad results. . . . The burden of proof is upon the patient to prove the negligence of the physician or surgeon, and that such negligence was the proximate cause of his injury and damages." In proving negligence, an injured person may present lay testimony to establish his or her appearance after treatment or testify regarding existing pain or its severity.
>
> Except in limited factual circumstances, however, the plaintiff in a medical negligence case is required to present expert testimony that establishes (1) the standard

> of skill expected of a reasonably competent medical practitioner and (2) that the alleged negligence proximately caused the injury.
>
> The opinion of the expert must be based "on reasonable medical probability and not speculation or possibility." To survive a motion for summary judgment in a medical malpractice case in which a medical expert is required, the plaintiff must produce expert evidence or summary judgment is proper.
>
> Kentucky consistently recognizes two exceptions to the expert witness rule in medical malpractices cases. Both exceptions involve the application of the *res ipsa loquitur* doctrine and permit the inference of negligence even in the absence of expert testimony. One exception involves a situation in which "'any layman is competent to pass judgment and conclude from common experience that such things do not happen if there has been proper skill and care'; illustrated by cases where the surgeon leaves a foreign object in the body or removes or injures an inappropriate part of the anatomy. The second occurs when 'medical experts may provide a sufficient foundation for *res ipsa loquitur* on more complex matters.'" An example of the second exception would be the case in which the defendant doctor makes admissions of a technical character from which one could infer that he or she acted negligently.

Andrew v. Begley, 203 S.W.3d 165, 170 -171 (Ky. App. 2006)(citations omitted).

Appellant argues that he could testify as to the suffering he endured due to Dr. Adams and Nurse Walkup's negligence, thereby negating the need for expert opinion. In the alternative, he argues that his expert, Nurse Turner, could give the required opinions regarding his alleged negligent care. The trial court's reasoning behind granting summary judgment in favor of these Appellees is as follows:

> Several questions arise showing an obvious need [for]

expert testimony. What training should a jail medical director perform for the nurses at the facility? What is the proper use of APRN's [sic] in these circumstances? Had Adams been told what the nurses at the facility themselves observed, would a doctor fail to exercise the required level of care in taking no urgent action as the nurses also are alleged to have done? What part did the inaction of Adams contribute to the injury claimed, and how would this compare to the negligence of the nurses?

A jury would not know what standards are expected of a person in Adams' position nor would they know as a matter of general knowledge how his alleged failures played a part in the ultimate result in this case. A jury cannot be left to speculate, especially in light of the application of comparative fault principles to the Defendants in this case.

Having concluded that expert testimony was required in this case, a separate issue is presented with respect to Walkup. The report of Sietsema's expert cannot fairly be read as critical of Walkup. After all, it was Walkup who directed SHP staff to take Sietsema to the hospital if improvement was not observed. The reported opinions are inadequate to proceed against Walkup at trial.

Some serious doubt exists as to whether the expert tendered could give an admissible opinion about Walkup. Opinions as to nursing are offered by someone with training and experience as a nurse. Walkup is an ARNP. This position required different training and job responsibilities than those of an RN or LPN. KRS [Kentucky Revised Statutes] 314.011(7)(8); KRS 314.193; KRS 314.195. Although Kentucky has not had occasion to consider what training or experience expertise is necessary for criticism of those positions between nurse and doctor, other states have held that an expert in the specific field is required for valid opinions as to the care provided. See Cox v. M.A. Primary and Urgent Care Clinic, 313 S.W.3d. 240, 258 (Tenn. 2010).

After reviewing Nurse Turner's expert opinion report located in the record, we could find no instance in which she opines that the actions or inactions of Dr. Adams and Nurse Walkup caused Appellant's injuries. Nurse Turner only discusses issues relating to the SHP nurses. Also, the record indicates that Nurse Turner was deposed and Appellant's brief quotes from said deposition; however, the deposition is not in the record before us. Even if we were to assume that the quotations which Appellant attributes to Nurse Turner's deposition are accurate, they are not critical of Dr. Adams or Nurse Walkup.

We disagree, however, with the trial court that this case requires a medical expert as to Dr. Adams and Nurse Walkup. We believe that the *res ipsa loquitur* exception can apply in this case and that material facts are still at issue which would preclude summary judgment. Here, Dr. Adams was the medical director of the HCDC.[3] This required him not only to be the primary medical caregiver of the facility, but to also oversee all aspects of the medical care received by the inmates. According to the deposition of SHP's President, Jennifer Hairsine, Dr. Adams's contract required him to visit the HCDC once a week. Dr. Adams testified in his deposition that he only visited the HCDC once a month. It appears that the weekly visit was delegated by Dr. Adams to Nurse Walkup. Dr. Adams also testified that he believed his only responsibility to the inmates of HCDC was as their primary physician and was unaware of the administrative aspects of his position.

[3] Dr. Adams was the medical director for six different detention centers.

In addition, Dr. Adams was unaware of Appellant's existence until he was transported to the hospital. Even though Nurse Walkup examined Appellant, it appears she did not inform Dr. Adams of the patients she treated at HCDC. Furthermore, in his deposition, Dr. Adams stated that he should have been contacted sooner regarding Appellant's condition. Nurse Walkup also testified that she should have been contacted sooner regarding Appellant's deteriorating condition. Dr. Adams and Nurse Walkup both stated in their depositions that had they known of Appellant's condition after May 13, they would have sent him to the hospital.

Moreover, only Dr. Adams and Nurse Walkup were qualified to diagnose medical conditions and prescribe medication. These two individuals were the primary medical caregivers for Appellant. Appellant had been in a medical observation unit since May 8, yet Nurse Walkup did not examine him until May 13 and did not check on his progress after that. Dr. Adams did not even know this patient existed.

These facts, coupled with Appellant's testimony regarding the pain and suffering he endured until he was finally hospitalized, can meet the *res ipsa loquitur* exception regarding the testimony of medical experts. A layman could conclude that Dr. Adams and Nurse Walkup did not effectively communicate with the SHP staff at HCDC in this instance. A layman could also conclude that they did not properly oversee this patient's care. Finally, considering Appellant's improvement once he was admitted to the hospital, a layman could conclude that

this lack of communication and oversight contributed to Appellant's prolonged pain and suffering.

We believe that the trial court erred in granting summary judgment in favor of Dr. Adams and Nurse Walkup. Whether or not these two individuals provided adequate medical care in these circumstances is something a layperson can understand. We believe that the *res ipsa loquitur* exception would apply in this case. For these reasons, we reverse the grant of summary judgment as to Dr. Adams and Nurse Walkup and remand for further proceedings.

We now turn to the appeal concerning SHP and its nurses. The SHP defendants were granted summary judgment because the trial court believed they were entitled to qualified official immunity. We disagree.

> "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. An act is not necessarily "discretionary" just because the officer performing it has some discretion with respect to the means or method to be employed.

Yanero v. Davis, 65 S.W.3d 510, 521-522 (Ky. 2001).

While most of the trial court's judgment discusses the three prongs necessary for qualified official immunity, it briefly touches on the fact that even though SHP is a private corporation, it is still entitled to immunity as though it were a government employee. The court cites to *Autry v. Western Kentucky University*, 219 S.W.3d 714 (Ky. 2007), and *Jerauld ex rel. Robinson v. Kroger*, 353 S.W.3d 636 (Ky. App. 2011), for the proposition that private parties can be given qualified official immunity. We find these cases distinguishable.

The facts of *Autry* are:

> Western Kentucky University student Melissa Kaye Autry (Katie) was assaulted, raped, and set on fire in her dormitory room in Hugh Poland Hall. She died three days later from her injuries. The dormitory was owned by WKU Student Life Foundation, Inc. (SLF). Western Kentucky University (WKU) was in charge of hiring personnel, making policy, and generally managing the operations of the dorm. Two men were charged with the crimes. One eventually pleaded guilty, and the other was acquitted at trial. There is no dispute that the men were not residents of Hugh Poland Hall.
>
> On behalf of Katie's estate, Donnie Autry and Virginia White, Co–Administrators of the estate, filed a wrongful death suit in Warren Circuit Court against WKU and several of its employees (Sandra Hess, Aubrey

> Livingston, Lynne Allison Todd, Alex Kuehne and Aja Hendrix) in their official and individual capacities. They also sued Pikes, Inc., Pi Kappa Alpha Fraternity, and SLF. Near the beginning of the case, all defendants filed motions to dismiss based on various claims of immunity. The motions were supplemented with documents and affidavits relating to the relationships between the defendants, and were extensively supported by legal memoranda.
>
> The Warren Circuit Court heard oral argument and subsequently dismissed the claims against WKU, its employees in their official capacities, and SLF. The employees in their individual capacities and the fraternity remained as parties. The Court of Appeals affirmed the Warren Circuit Court's dismissal of Western Kentucky University and its employees in their official capacity, but reversed the dismissal of WKU Student Life Foundation, Inc.

Autry at 716.

The Kentucky Supreme Court then granted discretionary review. The co-administrators of the estate argued that even if WKU had immunity, SLF did not because it was not a governmental agency, but a business entity that owned the dormitory and contracted with WKU to manage them. The Court disagreed and held:

> SLF acts as an alter ego of WKU for purposes of holding title to the dormitory properties and obtaining funding to refurbish them. Every other operational function related to the dormitories has been ceded back to WKU through the Management Agreement. Article IV of the agreement defines the duties of WKU and requires WKU to "provide continuous real property services" and to "manage the premises as residence halls for students." More specifically, Section 4.9 provides that WKU is responsible for all personnel matters. Section 4.10 makes WKU responsible for all housing policies, including

> those related to curfew, alcohol and drugs, and public access. These are rightfully WKU's duties. In reality SLF serves the University, and acts only on its behalf. SLF has no truly independent existence from WKU. To claim that WKU becomes an agent of SLF because of this arrangement is to elevate form over substance. SLF has no respondeat superior relationship with WKU, so as to make SLF vicariously liable for WKU's acts, because delegating dorm management to WKU is tantamount to WKU delegating to itself. The actual alignment is that WKU is a governmental agency fulfilling the public purpose of higher education by providing residence halls to its students which it manages and controls. It uses SLF as an agent to own property for WKU's purposes. This is all that SLF does. Thus while SLF is an incorporated entity, it exists only to serve WKU, and derives its immunity status through WKU.
>
> As an agent or alter ego of WKU, SLF, in its official capacity, is entitled to official immunity because this Court has found that WKU is entitled to governmental immunity.

Id. at 719.

We believe *Autry* is inapplicable to the case at hand because SHP is nothing like SLF. SHP is a private corporation that operates in twelve different states. SHP does not exist solely to serve HCDC and is not its alter ego.

In *Jerauld*, an inmate suffered permanent brain damage after he attempted suicide. The inmate's guardian then sued a number of people for the injury, including a psychologist. The psychologist was not a full-time employee of the detention center, but was an independent contractor. A previous panel of this Court found that the psychologist was entitled to qualified official immunity because his actions in evaluating and treating the inmate were discretionary.

We also believe this case is inapplicable to the case at hand. In *Jerauld*, the Court did not discuss whether this independent contractor was a government agent or employee who would be entitled to immunity. All parties went into the proceedings assuming he was. Because there is no discussion as to why the psychologist would be entitled to immunity, it would be inappropriate for us to base our holding on it.

SHP was not created by the state of Kentucky or any of its agencies, but is a private, for-profit corporation. Simply because it provides services to a state agent does not automatically entitle it to official immunity. In fact, Kentucky and Federal case law find that an independent contractor who performs services for the government is liable for his own negligence and is "responsible just as he would be on private work." *Taylor v. Westerfield*, 233 Ky. 619, 26 S.W.2d 557, 561 (1930). *See also Richardson v. McKnight*, 521 U.S. 399, 117 S.Ct. 2100, 138 L.Ed.2d 540 (1997) (prison guards employed by a private company are not entitled to immunity); *McCullum v. Tepe*, 693 F.3d 696 (6th Cir. 2012) (a psychiatrist employed by an independent, non-profit organization who worked part-time for a county prison is not entitled to qualified immunity); *Harrison v. Ash*, 539 F.3d 510 (6th Cir. 2008) (nurses employed by a private medical provider to provide medical services in a jail are not entitled to qualified official immunity).

We also find persuasive the case of *White v. Southern Health Partners, Inc.*, Nos. 2012-CA-001092-MR, 2012-CA-001106-MR, 2013 WL 2659897 (Ky. App.

June 14, 2013).[4] In *White*, Amberly White and Heather Stephens, former nurse employees of SHP who worked in the Campbell County Detention Center, asserted claims against SHP under the Kentucky Whistleblower Act. The two nurses alleged that they were terminated from their positions because they complained about inmate abuse and about inmates not being given proper medical treatment. This Court found that the nurses were not entitled to the protections afforded by the Act because they were not employees and SHP was not an employer as defined by the Act.

The Kentucky Whistleblower Act provides protection to public employees who report misconduct to the appropriate authorities. KRS 61.102(1) states:

> No employer shall subject to reprisal, or directly or indirectly use, or threaten to use, any official authority or influence, in any manner whatsoever, which tends to discourage, restrain, depress, dissuade, deter, prevent, interfere with, coerce, or discriminate against any employee who in good faith reports, discloses, divulges, or otherwise brings to the attention of the Kentucky Legislative Ethics Commission, the Attorney General, the Auditor of Public Accounts, the Executive Branch Ethics Commission, the General Assembly of the Commonwealth of Kentucky or any of its members or employees, the Legislative Research Commission or any of its committees, members or employees, the judiciary or any member or employee of the judiciary, any law enforcement agency or its employees, or any other appropriate body or authority, any facts or information relative to an actual or suspected violation of any law, statute, executive order, administrative regulation, mandate, rule, or ordinance of the United States, the Commonwealth of Kentucky, or any of its political subdivisions, or any facts or information relative to actual

[4] This case is cited pursuant to Kentucky Rules of Civil Procedure (CR) 76.28(4)(c) as persuasive authority only.

> or suspected mismanagement, waste, fraud, abuse of authority, or a substantial and specific danger to public health or safety. No employer shall require any employee to give notice prior to making such a report, disclosure, or divulgence.

An employee is defined as

> a person in the service of the Commonwealth of Kentucky, or any of its political subdivisions, who is under contract of hire, express or implied, oral or written, where the Commonwealth, or any of its political subdivisions, has the power or right to control and direct the material details of work performance[.]

KRS 61.101(1). An employer is defined as "the Commonwealth of Kentucky or any of its political subdivisions. Employer also includes any person authorized to act on behalf of the Commonwealth, or any of its political subdivisions, with respect to formulation of policy or the supervision, in a managerial capacity, of subordinate employees[.]" KRS 61.101(2).

We find the holding of this Court in *White* persuasive to the case *sub judice*. The Court stated in pertinent part:

> [T]here is little evidence that Campbell County had any control over the specific, day-to-day aspects of White's and Stephens's work in providing medical services to inmates at the CCDC. The county did not have the power to direct the appellants to perform their tasks in a particular way, nor did it maintain the kind of substantive, detailed control and supervision over their duties[.] . . . Admittedly, the county did retain the right to ask SHP to remove employees with whom the county was dissatisfied, and the right to revoke the security clearance of SHP employees. But this power relates primarily to the vital security concerns associated with the jail setting, rather than to dissatisfaction with the professional performance of SHP employees. . . . There is

> no evidence that the termination of White and Stephens was at the behest of the county at all, still less from any retaliatory motive on the part of the county for their work-related allegations. The county's power and control to direct the appellants' work performance was simply not sufficient to render the appellants "employees" under the Whistleblower Act.
> . . . .
>
> The appellants concede that SHP is not a political subdivision of the Commonwealth, but contend that it is nonetheless a corporate "person" authorized to act on behalf of the county in fulfilling its statutory duty to provide medical care to detention center inmates.
>
> . . . [T]he purpose of the Act would be defeated if an aggrieved employee could maintain an action "without joining the Commonwealth or a political subdivision as a party defendant." . . . It is well-established that in order to demonstrate a violation of the Act, a claimant must establish that (1) the employer is an officer of the state; and (2) the employee is employed by the state. Adopting the appellants' interpretation would mean that SHP, by contracting to provide medical services to inmates of the county jail, was in effect transformed into a political subdivision of the state. Under the facts of this case, such a result would be an unwarranted expansion of the scope of the Act.

White at *4.

If SHP and its nurses are not government employers or employees for the purposes of the Kentucky Whistleblower Act, it would be illogical to find that they are eligible for official immunity. The above-cited case law states that independent contractors who perform services for the government, and are not merely an alter ego, are not immune from suit. Since SHP is a private corporation that was not created by the state of Kentucky, it does not, as a matter of law, have qualified

official immunity. If SHP does not have immunity, neither do the nurses it employs.

The trial court in this case also found an alternative reason to grant summary judgment in favor of SHP and its nurses. The trial court found that "Sietsema has also failed to provide any evidence of causation between SHP Defendants' acts and the injury sustained." In other words, the court believed Appellant did not provide evidence that the conduct of SHP and its nurses caused the bowel obstruction for which he was hospitalized.

We agree that there was no evidence presented that the SHP nurses caused Appellant's bowel obstruction; however, there was ample evidence that the SHP nurses' conduct exacerbated his condition due to the delay in transporting him to a hospital. Concerning the time period of May 13 to May 17, Dr. Adams, Nurse Walkup, and Nurse Turner provided evidence that the SHP nurses provided inadequate care. Both Dr. Adams and Nurse Walkup testified in their depositions that had they been told Appellant was refusing his medications and still vomiting, they would have immediately sent him to the hospital. In addition, Nurse Turner listed in her expert opinion report the following failures of the nursing staff: Appellant should have been more closely monitored in the observation unit; progress notes should have been kept while Appellant was in the observation unit; the nurses should have contacted Dr. Adams regarding Appellant's condition; the nurses should have recognized his critical symptoms before he collapsed in his cell; the nurses should not have delayed sending Appellant to the emergency room

on May 17; and the nurses were making assessments about Appellant's condition even though that is outside the scope of their medical training.[5] Finally, Appellant himself can testify to the pain and suffering he experienced from May 13 to May 17 and that said pain was lessened once he was hospitalized and received treatment. Because this case was dismissed via summary judgment, we must look at the evidence in the record in a light most favorable to Appellant. Looking at the above evidence in such a fashion convinces us that Appellant provided sufficient evidence of causation and summary judgment should not have been granted.

For the foregoing reasons, we reverse and remand for further proceedings.

ALL CONCUR.

[5] This is not an exhaustive list of Nurse Turner's opinion, only the most relevant examples.

BRIEFS AND ORAL ARGUMENT FOR APPELLANT:

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BRIEF FOR APPELLEES JOHN ADAMS, M.D. AND ELIZABETH WALKUP A.R.N.P.:

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ORAL ARGUMENT FOR APPELLEES JOHN ADAMS, M.D. AND ELIZABETH WALKUP A.R.N.P.:

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BRIEF FOR APPELLEES SOUTHERN HEALTH PARTNERS, INC., HEATHER KENNEDY, BRENDA BROWN, GEORGEANN WILLIAMS, AND CHRISTINA FULK:

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