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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001188-MR

RANDY THOMPSON, INDIVIDUALLY;
and TIM CODY, INDIVIDUALLY

APPELLANT

v. APPEAL FROM KNOTT CIRCUIT COURT
HONORABLE KIM C. CHLDERS, JUDGE
ACTION NO. 12-CI-00261

COURTNEY BRYAN SMITH

APPELLEE

OPINION
AFFIRMING AND REMANDING

** ** * * * * *

BEFORE: COMBS, STUMBO AND TAYLOR, JUDGES.

COMBS, JUDGE: Tim Cody and Randy Thompson appeal the order of the Knott Circuit Court which denied their motion for summary judgment. After our review, we affirm.

On November 14, 2011, Courtney Smith was operating an ATV on his family's land in Knott County. The land had formerly been part of a Knott County project to build ATV and equestrian trails throughout the county. Smith's ATV collided with a metal sign that was largely obstructed by overgrown brush and vegetation.

On October 2, 2012, Smith filed a complaint alleging that Cody and Thompson¹ had negligently placed the sign on the property. He also claimed that Cody and Thompson had committed trespass. Thompson was the County Judge Executive during the construction of the trail system. The brief for Cody and Thompson refers to Cody only as a "county employee." From our review of the record, it appears that he was the director of the Knott County ATV Center. The complaint named them as individuals -- and not in their official capacities.

On June 2, 2014, Cody and Thompson filed a motion for summary judgment in which they raised the defense of qualified official immunity. The trial court denied the motion on July 8, 2014, without discussion or elaboration. This appeal followed.

Cody and Thompson argue that the court erred in denying their motion for summary judgment because they enjoy immunity from litigation.

We first note that Kentucky Rule[s] of Civil Procedure (CR) 54.01 requires that all appeals be taken from "a final order adjudicating all the rights of all the parties in an action or proceeding" The court's order overruling the motion to

¹ The complaint also named other defendants, but Cody and Thompson are the only parties who are appealing.

dismiss based on immunity is not final. However, our Supreme Court has held that such an interlocutory order involving an issue of immunity is properly subject to appeal. *Breathitt County Bd. of Educ. v. Prater*, 292 S.W.3d 883, 887 (Ky. 2009).

The doctrine of immunity is “a bedrock component” of our law. *Caneyville Volunteer Fire Dep’t v. Green’s Motorcycle Salvage, Inc.*, 286 S.W.3d 790, 799 (Ky. 2009). It affords absolute immunity from lawsuits to “state legislators, prosecutors, judges, and others doing the essential work of the state” *Autry v. Western Kentucky Univ.*, 219 S.W.3d 713, 717 (Ky. 2007).

Pertinent to this case, officials sued in their individual capacities enjoy qualified official immunity. *Yanero v. Davis*, 65 S.W.3d 510, 522 (Ky. 2001); *Bolin v. Davis*, 283 S.W.3d 752, 757 (Ky. App. 2008). Qualified official immunity shields public officers or employees from being liable for:

the negligent performance . . . 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. . . . Conversely, an officer or employee is afforded no immunity from tort liability for the negligent performance of a ministerial act, i.e., one that requires only obedience to the orders of others, or when the officer’s duty is absolute, certain, and imperative, involving merely execution of a specific act arising from fixed and designated facts.

Yanero, supra.

We agree with Cody and Thompson that Smith has not provided **any** proof that they were performing **any** governmental function -- much less that they acted negligently. In both his response to summary judgment and now in his brief,

Smith has merely repeated the allegations made in his complaint. He claims that Cody and Thompson negligently chose the sign and that they trespassed on the family property in order to erect the sign.

However, a party's self-serving allegations are not proof. *See Haugh v. City of Louisville*, 242 S.W.3d 683, 686 (Ky. App. 2007). In actuality, the only evidence produced during discovery revealed that the sign at issue was not part of the Knott County trail project. It was not even the same *type* of sign used in the county trails.

Therefore, Cody and Thompson cannot assert the shield of qualified official immunity because there is no evidence that a governmental function was being performed. The trial court correctly found that immunity was not an issue, and it did not err in denying the motion to dismiss premised upon immunity. We note that our opinion is limited to the issue of immunity alone and does not affect other grounds not before us.

Thus, we must affirm the Knott Circuit Court's denial of summary judgment and remand for additional proceedings.

ALL CONCUR.

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