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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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**Irvin Shell, as administrator of the Estate of Annie Ruth
Peterson, deceased**

v.

Terri Butcher and Shayla Payne

**Appeal from Montgomery Circuit Court
(CV-14-901569)**

SELLERS, Justice.

Irvin Shell, as administrator of the estate of Annie Ruth Peterson, deceased ("the estate"), appeals from separate summary judgments

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entered in favor of Montgomery-municipal jail employees Terri Butcher and Shayla Payne, respectively, on the basis of State-agent immunity. We affirm.

I. Facts

On April 13, 2013, at approximately 2:10 a.m., Montgomery police officers arrested Annie Ruth Peterson for driving under the influence "of any substance" and transported her to the municipal jail.¹ Peterson, however, was not under the influence of an intoxicating substance at the time of her arrest; rather, she was suffering from a hemorrhagic stroke. Upon arriving at the jail, Butcher "booked" Peterson into the jail. Specifically, Butcher accessed Peterson's arrest report, verified her personal information, and made an inventory of her personal belongings. Butcher also observed that, although Peterson appeared intoxicated, she was able to communicate verbally during the booking process and did not appear to be suffering from any medical condition or illness. After Butcher

¹Peterson was also issued citations for driving on the wrong side of the road, driving without first obtaining a driver's license, and leaving the scene of an accident.

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completed the booking process, she had no further contact with Peterson. Upon admission to the jail, Peterson was also required to undergo a "strip search" by a correctional officer of the same gender. However, the female officer responsible for conducting the search was on break or otherwise unavailable. Therefore, Payne, a female correctional officer who had been assigned to work with the male inmates, was asked to perform the search. Payne conducted the search, had Peterson change into a jail "jumpsuit," and escorted her into the security cell and/or "drunk tank" to sober up. Thereafter, the officer responsible for supervising the female inmates returned to the designated area of the jail, and Payne returned to her assigned position with the male inmates, thus having no further interaction with Peterson. After spending time in the security cell, Peterson was taken to the processing room where she was photographed, fingerprinted, and underwent a medical profile and/or screening. Peterson was then taken to a regular cell where she was issued a mat, a sheet, and a blanket. Later that morning, a correctional officer retrieved Peterson from her cell for her to meet with a bonding agent. When that officer attempted to awaken Peterson, he observed that she appeared "drowsy"

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and could not stand up. Peterson was taken to the nurse's station where she was assessed by a nurse for approximately one hour; Peterson's vital signs were normal, and she was returned to her cell. Later that afternoon, another correctional officer who was checking on inmates requested that the nurse examine Peterson because Peterson appeared ill. After observing Peterson, the nurse determined that Peterson had left-side body weakness; the nurse contacted a doctor and relayed that information. The doctor, in turn, issued an order to "release inmate and send to emergency room." After the bonding process was complete, Peterson was released to a family member who transported Peterson to a local hospital where she was diagnosed with having suffered a stroke; she died three days later on April 16, 2013.

The estate sued Butcher and Payne in their individual capacities, alleging that they had been negligent and wanton in failing to obtain medical care for Peterson in a timely manner. Butcher and Payne filed individual motions for a summary judgment asserting that they were entitled to State-agent immunity under the standard announced in Ex parte Cranman, 792 So. 2d 392 (Ala. 2000) (plurality opinion), and

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adopted by the Court in Ex parte Butts, 775 So. 2d 173, 178 (Ala. 2000); the trial court granted those motions. This appeal followed.

II. Standard of Review

This Court reviews a summary judgment de novo, and we use the same standard used by the trial court to determine whether the evidence presented to the trial court presents a genuine issue of material fact. Rule 56(c), Ala. R. Civ. P.; Nettles v. Pettway, 306 So. 3d 873 (Ala. 2020). The movant for a summary judgment has the initial burden of producing evidence indicating that there is no genuine issue of material fact. Once the movant produces evidence establishing a right to a summary judgment, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. We consider all the evidence in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts in the nonmovant's favor. Id.

III. Discussion

A. Law-of-the-Case Doctrine

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Initially, the estate argues that the motions for a summary judgment filed by Butcher and Payne are barred by the law-of-the-case doctrine. We disagree. In May 2017, Butcher and Payne filed a motion for a summary judgment based on State-agent immunity, which the trial court denied.² Butcher and Payne petitioned this Court for a writ of mandamus directing the trial court to vacate its order denying the motion for a summary judgment and to enter a summary judgment in their favor. On February 21, 2018, this Court entered an order summarily denying the petition for a writ of mandamus. Ex parte City of Montgomery et al. (No. 1170321). In August 2020, Butcher and Payne filed individual motions for a summary judgment on the basis of State-agent immunity, which the trial court granted. In its orders granting the motions for a summary judgment, the trial court held that the law-of-the-case doctrine was inapplicable because the motions presented new additional facts and evidence, i.e., sworn testimony, relevant to the issue of immunity. The estate asserts that this Court's February 21, 2018, order denying

²The summary-judgment motion was filed collectively by the City of Montgomery, Butcher, and Payne. The City is not a party to this appeal.

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mandamus relief was an adjudication on the merits and, thus, became the law of the case regarding State-agent immunity.

The filing of a petition for a writ of mandamus is a unilateral act of a party requesting extraordinary relief from an action taken by a trial court during the pendency of litigation. Rule 21, Ala. R. App. P. When this Court summarily denies such a petition without ordering a response, that act of denial neither amounts to a ruling on the merits of the assertions in the petition nor affirms the determination of the trial court such that it becomes the law of the case. Contrary to the estate's claim, this Court's February 21, 2018, order denying the petition for a writ of mandamus had no effect on the underlying litigation, but merely returned the parties to the status quo ante as if no petition had been filed. See, e.g., Ex parte Shelton, 814 So. 2d 251, 255 (Ala. 2001). Stated differently, a writ of mandamus is an extraordinary writ, and this Court routinely denies petitions for a writ of mandamus for procedural deficiencies without consideration of the merits of the petition whatsoever. By way of example, Rule 21(a)(1)(F), Ala. R. App. P., requires a petition for a writ of mandamus to contain "copies of any order or opinion or parts of the record

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that would be essential to an understanding of the matters set forth in the petition." Therefore, in the context of seeking review of a trial court's order denying a summary-judgment motion on the basis of State-agent immunity, a petitioner who fails to provide the motion for a summary judgment, any responses to that motion, and the trial court's order denying that motion would be in a perilous position, because the petitioner has essentially deprived the appellate court of any means by which to conduct a meaningful review of the issues presented in the petition. See Ex parte Staats-Sidwell, 16 So. 3d 789 (Ala. 2008) (holding that the failure to include essential information in petition for writ of mandamus rendered petition fatally defective). Because the summary denial of a petition for a writ of mandamus is not a ruling on the merits, the law-of-the-case doctrine is inapplicable to bar the summary-judgment motions at issue, which the trial court concluded were supported by additional facts and evidence that was not a part of the evidentiary record of the May 2017 motion for a summary judgment. See Ex parte Jones, 147 So. 3d 415, 420 (Ala. 2013) ("[G]enerally, 'a court may reconsider its ruling on a motion for summary judgment and may correct an erroneous

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ruling at any time before final judgment.... The number of times a subsequent motion for summary judgment will be allowed rests within the sound discretion of the judge before whom the case is to be tried.'" (quoting Food Serv. Distribs., Inc. v. Barber, 429 So. 2d 1025, 1027 (Ala. 1983))).

B. State-agent Immunity

A State agent claiming immunity in his or her individual capacity bears the burden of demonstrating that the plaintiff's claims arise from a function that would entitle the State agent to immunity. Ex parte Cranman, supra. If the State agent makes such a showing, the burden then shifts to the plaintiff to demonstrate that one of the two categories of exceptions to State-agent immunity recognized in Cranman is applicable. The estate asserts that the second exception applies in this case, i.e, that Butcher and Payne acted "willfully, maliciously, fraudulently, in bad faith, beyond his or her authority, or under a mistaken interpretation of the law." Cranman, 792 So. 2d at 405. One of the ways in which a plaintiff can demonstrate that a State agent acted beyond his or her authority is by offering evidence that the State agent

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failed " 'to discharge duties pursuant to detailed rules or regulations, such as those stated on a checklist.' " Giambrone v. Douglas, 874 So. 2d 1046, 1052 (Ala. 2003) (quoting Ex parte Butts, 775 So. 2d at 178). It is undisputed that Butcher and Payne were discharging duties pursuant to Montgomery municipal-jail policies and procedures and, therefore, generally would be entitled to State-agent immunity. The issue for our resolution is whether the estate met its burden of showing that Butcher and Payne failed to follow those policies and procedures and, thus, acted beyond their authority so as to become liable for their respective actions.

1. Butcher

The estate contends that Butcher acted beyond her authority by failing to complete a medical profile pursuant to Policy No. 2.01.B.4. Policy No. 2.01, concerning the "inmate admission process," provides, in relevant part:

"PROCEDURE

"1. The officers assigned to Post 994 will book each person committed to the Montgomery Municipal Jail. ... The officer(s) processes each new admission into the computerized jail management system. The officer must first obtain personal information such as date of birth, height, weight, etc. They

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also enter arrest information such as arresting officer, processing officer, searching officer, and charges.

"....

"B. PROCESS FOR ADMITTING NEW INMATES INTO JAIL

"1. All inmates are subject to a pat search upon entering the Municipal Jail. Inmates will be searched by officers of the same gender. A strip search will be conducted as soon as possible for incoming inmates.

"2. Arresting officers should not bring an inmate to the Municipal Jail who is medically unfit for incarceration into this facility.

"3. All personal property is logged in and the prisoner acknowledges by signing the property folder. All transactions will be in view of the jail's video equipment. If the prisoner is not competent by reason of insanity or intoxication to verify the personal effects, inventory, and authenticate the property envelope, the booking officer will secure a signature from the arresting officer.

"4. The booking officer must visually evaluate the inmate's condition. If the inmate appears to be medically unfit for confinement, the Jail-1 supervisor will notify a jail nurse. The officer obtains the initial medical profile to include a mental health inquiry on each new admission and forwards the profile to the medical department for review.

"5. New inmates will be fingerprinted, photographed, given a wristband, and a medical screening form will be prepared.

"....

"8. Inmates charged with Public Intoxication, D.U.I., or inmates under the influence of drugs will be housed in a security cell until sufficiently sober to be processed and placed in general population. During the sobering-up period, close supervision must be maintained to guard against the ever-present danger of medical emergencies. Before placing any inmate who appears to be intoxicated or under the influence of drugs in a security cell, he/she should be examined carefully for symptoms of illness or injury.

"9. Incoming inmates will be issued bedding, jumpers, and personal hygiene items. They will be provided with a shower and hair care if necessary."

(Emphasis added.)

We are unwilling to conclude that Policy No. 2.01 constitutes the type of "detailed," checklist-like rule that defines the scope of a State agent's authority. Giambrone. The provisions of Policy No. 2.01 are broadly phrased, some of the provisions do not indicate which correctional officer is tasked with the duty stated in the provision, and other provisions are ambiguous. Relevant here is Policy No. 2.01.B.4., which states:

"4. [a.] The booking officer must visually evaluate the inmate's condition. [b.] If the inmate appears to be medically unfit for confinement, the Jail-1 supervisor will notify a jail nurse. [c.] The officer obtains the initial medical profile to include a

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mental health inquiry on each new admission and forwards the profile to the medical department fo review."

(Emphasis added.)

The first part of subsection B.4. states that the "booking officer" must visually evaluate the inmate's condition, which Butcher did. The second part states that "the Jail-1 supervisor" will notify a jail nurse if the inmate appears to be medically unfit for confinement. The third part states that the "officer" obtains the initial medical profile. However, it is not clear whether the "officer" who is required to obtain the medical profile is the booking officer, the Jail-1 supervisor (who may also be a correctional officer), or some other correctional officer of the jail. In other words, Policy No. 2.01.B.4. is not so specific as to put Butcher on notice that she was required to obtain a medical profile on an inmate during the booking process. In any event, Policy No. 5.01, the more detailed policy regarding "health care services," confirms that the medical profile is to be obtained by a "processing officer." That policy states, in relevant part:

"2. During processing into the Municipal Jail, each inmate will have a Primary Health medical Screening Form completed by the processing officer. The form will become a part of the

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inmate's medical record. The original screening form will be forwarded to the jail medical staff and a copy will be maintained in the inmate's property folder. The inmate will be assessed by the medical staff within 24 hours.

"....

"4. If during processing an inmate indicates he/she has chest pain, high blood pressure, diabetes, shortness of breath, seizures, heart problems, uncontrolled bleeding, or dizziness, the medical staff will be notified immediately...."

(Emphasis added.)

Sharleswen Atchinson, another correctional officer employed at the jail, stated in her deposition that the medical profile is obtained during processing, which, she said, occurs after an inmate has spent at least four hours in a security cell. Atchinson stated in her deposition that, after Peterson had spent the required time in the security cell, she escorted Peterson to the processing room where Peterson was photographed, fingerprinted, and underwent a medical profile. Because Policy No. 5.01.2. expressly states that the processing officer is required to obtain medical profiles on inmates, the estate did not meet its burden of

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demonstrating that Butcher, the booking officer, acted beyond her authority in failing to obtain a medical profile on Peterson.

The estate also argues that Butcher violated Policy No. 2.04 by failing to notify a nurse when Peterson was booked into the jail. Policy No. 2.04 concerns the "classification of inmates" and states, in relevant part,

"5. Intoxicated Inmates

"All inmates committed to jail for public intoxication or marked drunk on the arrest report will be processed and housed in a security cell. All individuals charged with D.U.I. will remain in jail custody for a minimum of 4 hours. When placed in a security cell, the inmate will be placed on his/her side to prevent choking and observed closely. [Correctional officers] will wake the inmate up when the round[s] are made. The jail nurse must be notified."

(Emphasis added.)

The trial court concluded that Policy No. 2.04.5. did not constitute a detailed rule, such as one stated on a checklist, because the policy does not specify "when, who or under what conditions a jail nurse must be notified." We agree. Like Policy No. 2.01, Policy No. 2.04.5. is broadly phrased and not sufficiently detailed to impose a duty to notify the jail nurse during the booking process. In fact, given the chronological order of

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the steps listed in Policy No. 2.05.5., it would appear that notification of the jail nurse would not occur until after an inmate has been searched and confined in a security cell. Notably, Major Orlando Gonzalez, another correctional officer employed at the jail, testified in his deposition that Policy No. 2.04.5. was revised in January 2014, after Peterson's death, to specifically provide that "a nurse is to see any person before [he or she goes] into the drunk tank." Because Policy No. 2.04.5. was not so specific or sufficiently detailed as to impose a duty upon Butcher to contact a jail nurse during the booking process, the estate did not meet its burden of establishing that Butcher violated that policy.

2. Payne

The estate contends that Payne is not entitled to State-agent immunity because, it says, Payne also violated Policy No. 2.04.5. by failing to notify the jail nurse either before or after she conducted Peterson's search and placed her in the security cell. As indicated, Policy No. 2.04.5. does not constitute the type of detailed, checklist-like rule that defines the scope of a State-agent's authority; the policy did not specify "when, who

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or under what circumstances a jail nurse must be notified." Thus, Policy No. 2.04.5. did not impose a duty on Payne to contact a jail nurse either before or after she searched Peterson and placed her in the security cell. Accordingly, the estate failed to demonstrate that Payne acted beyond her authority in any manner. Moreover, there is simply no evidence indicating that Payne acted negligently and/or wantonly in conducting the search of Peterson. As indicated, when Peterson was ready to be searched, the female officer responsible for conducting the search was on break or otherwise unavailable. Therefore, Payne, who had been assigned to work in another area of the jail, was asked to conduct the search. After Payne conducted the search, the officer responsible for supervising female inmates returned to the designated area of the jail, and Payne went back to her assigned position with the male inmates, thus having no further interaction with Peterson.

IV. Conclusion

The estate has not demonstrated that the trial court erred in entering a summary judgment in favor of Butcher and Payne based on

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State-agent immunity. Accordingly, we affirm the trial court's summary judgments.

AFFIRMED.

Parker, C.J., and Bolin, Wise, and Stewart, JJ., concur.