

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000264-MR

RAY HART

APPELLANT

v. APPEAL FROM GRANT CIRCUIT COURT
HONORABLE CHARLES F. SATTERWHITE, JUDGE
ACTION NO. 97-CI-00293

GREGORY MCDOWELL

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; COMBS AND KNOPF, JUDGES.

KNOPF, JUDGE: Ray Hart appeals from a January 22, 1998, judgment of the Grant Circuit Court dismissing his tort-based complaint for damages against Gregory McDowell. Hart contends that the trial court misapplied the doctrine of prosecutorial immunity. We find no such error and affirm the trial court's judgment.

Ray and Kristina Hart married in 1991. Sometime before March 5, 1996, when Kristina bore the couple's son, they separated. On or about March 25, 1996, Kristina executed a criminal complaint against Ray, charging him with non-support of their child in violation of KRS 530.050. McDowell, at that time the Grant County Attorney, procured Ray's arrest and prosecuted

him for the alleged offense. Following a hearing on October 1, 1996, the Grant District Court acquitted Ray of the charge.

About a year later, in September 1997, Ray filed the instant complaint. He alleged that McDowell had initiated and maintained the criminal-non-support charge maliciously and without probable cause.¹ He noted that the child had been only about three-weeks old at the time of the charge and that at that point no child-support order had yet come into effect. Twice during those three weeks, he claimed, he had offered Kristina support. McDowell either knew or should have known of these circumstances, Ray argued, and so should further have known that the criminal charge was baseless.

McDowell denied Ray's allegations and asserted an absolute immunity defense. Agreeing with McDowell that absolute immunity applied, the trial court summarily dismissed the complaint. Ray contends that a prosecutor sued in his or her individual capacity is not entitled to absolute immunity. We disagree.

In McCollum v. Garrett,² our Supreme Court held that so long as a prosecutor acts within the scope of the duties imposed by law, quasi-judicial immunity is available, but otherwise it is not.

. . . .

¹Ray also accused Kristina of participating in the malicious prosecution. Kristina filed a cross-claim against McDowell. In its January 1998 judgment, the trial court did not rule on Ray's claim against Kristina, but it dismissed her cross-claim. Kristina has not appealed from that ruling. She is thus a purely nominal party to this appeal.

²Ky., 880 S.W.2d 530 (1994).

A prosecutor acting as such and in accordance with the duties of office as defined by Kentucky law should have absolute immunity.³

The prosecutor in that case had been sued in his individual capacity. In reconfirming what is a standard and widespread rule⁴ conferring on prosecutors a greater immunity than the qualified immunity enjoyed by most government officials sued as individuals, the Court explained "that a public prosecutor must have immunity when he is acting within the scope of his authority for without it, the prosecutorial function would suffer."⁵ The immunity is extended because of the function it protects rather than the title of the person who claims it.

Chief among the reasons most often cited for granting absolute prosecutorial immunity are concern that constant fear of later civil suits for damages may chill the vigorous prosecution of those charged with violating state statutes; that such fears may deter competent people from seeking office; and that defense of claims for malicious prosecution may drain valuable time and effort. Balancing the interests of the plaintiff in a malicious prosecution action against the interests of the system of justice as a whole, Judge Learned Hand early observed:

As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their

³*Id.* at 534 and 535.

⁴See Knapper v. Connick, 681 So. 2d 944 (La. 1996) (collecting cases). See also *The Restatement of Torts (2nd)* § 656 (1977).

⁵880 S.W.2d at 534.

duties to the constant dread of retaliation.⁶

It is true that no immunity extends to acts by a prosecutor that exceed the scope of his or her authority⁷ and that qualified rather than absolute immunity applies to prosecutorial functions remote from the judicial phase of the criminal process.⁸ Neither of these limitations on absolute prosecutorial immunity applies here, however, for the charging and prosecuting functions Ray claims that McDowell abused are at the core of a prosecutor's authority and are intimately related to judicial proceedings. We conclude that McDowell is not subject to suit on the grounds that Hart has alleged. The trial court did not err, therefore, when it dismissed Hart's complaint. Accordingly, we affirm the January 22, 1998, judgment of the Grant Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

John F. Rampulla, III
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BRIEF FOR APPELLEE:

Stuart W. Cobb
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⁶Knapper v. Connick, 681 So. 2d 944, 947 (La. 1996) (citing Gregoire v. Biddle, 177 F.2d 579, 581 (2d Cir. 1949), cert. denied, 339 U.S. 949, 94 L. Ed. 1363, 70 S. Ct. 803 (1950)).

⁷McCollum v. Garrett, n.2, (citing Dugger v. Off 2nd, Inc., Ky. App., 612 S.W.2d 756 (1981)).

⁸McCollum v. Garrett, n.2 (citing Buckley v. Fitzsimmons, 509 U.S. 259, 125 L. Ed. 2d 209, 113 S. Ct. 2606 (1993)).