

Commonwealth Of Kentucky
Court Of Appeals

NO. 2000-CA-002371-MR

JOSEPH GIROME AND DORIS GIROME

APPELLANTS

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH BAMBERGER, JUDGE
ACTION NO. 00-CI-00715

KENTON COUNTY FISCAL COURT;
KENTON COUNTY AIRPORT BOARD;
AND MIKE CHAMBERS, KENTON
COUNTY MAINTENANCE

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: McANULTY and TACKETT, Judges; JOHN D. MILLER, Special Judge¹

McANULTY, JUDGE: On May 18, 2000, appellants Doris and Joseph Girome filed a claim based on a personal injury in the Board of Claims against the Kenton County Fiscal Court, the Kenton County Airport Board, and Mike Chambers of Kenton County Maintenance. The claim involved a fall by Doris Girome at the airport terminal which appellants identified as being in Kenton County.² The

¹Senior Status Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

² The Cincinnati/Northern Kentucky International Airport is located in Boone County, Kentucky.

Board of Claims concluded that it did not have jurisdiction over a county, and dismissed the claim. The Board further opined that if it could not exercise jurisdiction over counties, it could not purport to exercise jurisdiction over their employees or elected officials, citing Kentucky Constitution § 14, 54, and 241, and Happy v. Erwin, Ky., 330 S.W.2d 412 (1960).

On June 20, 2000, appellants appealed this action to the Boone Circuit Court, alleging that their case was erroneously dismissed and they were denied due process of law. Appellants contended that the Board's stance as to jurisdiction discriminates against classes of plaintiffs as it relates to counties=negligence, and such classification has no justifiable basis in Kentucky or United States Constitutional law.

Appellees filed a motion to dismiss on July 11, 2000, on the basis of a lack of notice to them of the action before the Board of Claims, and that appellants cited Boone County in the petition and alleged no connection with nor bearing on the Kenton County Fiscal Court, the Kenton County Airport Board, and Mike Chambers. Appellees filed a second motion to dismiss on August 10, 2000, on the basis that KRS³ 44.070 does not grant the Board of Claims jurisdiction over Kenton County.

Appellants responded that the lack of notice of the action before the Board of Claims was because it was a summary dismissal, and that jurisdiction was proper because Kenton County

³Kentucky Revised Statutes.

owns real estate in Boone County known as the Cincinnati/Northern Kentucky International Airport and it appoints and controls the Airport Board. Appellants submitted an amended petition alleging these facts. Appellants alleged the Airport Board to consist of, and to be regulated and funded by, state and federal agencies.

Appellees filed a second response in which they argued, in addition to reiterating their previous allegations, that pursuant to KRS 44.140(2) the proper place to appeal the decision of the Board of Claims was in Franklin County, Kentucky. The circuit court dismissed appellants' appeal with prejudice on September 20, 2000, without stating the grounds for dismissal.

On appeal, we do not believe that it was clear that Boone Circuit Court was not the proper county for the appeal. In this case, there was no hearing since the claim before the Board of Claims was dismissed for lack of jurisdiction. KRS 44.084 provides that the venue for hearings shall be the county wherein the claim accrues unless the parties otherwise agree with approval of the Board. Thus, we do not believe that it was necessary for appellants to have brought this claim in another county.

Next, we consider whether the Boone Circuit Court properly dismissed for lack of jurisdiction before the Board of Claims. Appellants argue that the court erred in that the Airport Board is not merely a county concern because membership of the board includes citizens from Boone and Campbell Counties

in Kentucky and from Cincinnati and Hamilton County, Ohio, and the services provided by the Cincinnati/Northern Kentucky International Airport affect the surrounding counties and another state. Thus, appellants feel that the trial court too quickly assumed that the Airport board was a county entity. We find no indication that the Airport Board is anything but a county concern. The statutes allowing the creation of an airport board authorize [a]ny urban-county government, city, or county, or city and county acting jointly, or any combination of two (2) or more cities, counties or both to establish such a board. We do not agree that because more than one county is involved it transforms the airport board into a state agency. Nor does the fact that Kenton County's Airport Board includes members from other counties and from Ohio in and of itself transform the Airport Board into a state agency.

Next, appellants argue that this court should reconsider our decision in Board of Claims v. Banks, Ky. App., 31 S.W.3d 436 (2000). Our opinion in Banks relied on precedent which has not been overruled by the Kentucky Supreme Court. That opinion noted that the legislature has not expressly waived the immunity of counties. We do not discern a basis to reconsider the result reached in Banks.

Finally, appellants argue that the trial court erred in dismissing the claim as to Mike Chambers as an individual employee of the Kenton County Airport, without regard to the

immunity of counties. Chambers, as a maintenance person for the area in which appellee Doris Girome fell, does not have official or sovereign immunity because maintaining the terminal and keeping an area hazard-free are ministerial functions. Yanero v. Davis, Ky., 65 S.W.3d 510 (2001). A public 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. @ Id. at 522. Thus, it appears that the employee identified by appellants is not immune from liability under the facts as alleged.

The Board of Claims properly dismissed the claim as to Chambers, although for a different reason than that stated in its dismissal. The jurisdiction of the Board of Claims applies only to the Commonwealth and those agencies, officers, or employees who are cloaked with sovereign, governmental, or official immunity. Id. at 524. It has no application to those not cloaked with immunity. Id. Jurisdiction over any claim against a non-immune employee does not rest in the Board of Claims but in an action in circuit court. Id. As the action before the circuit court was an appeal from the order of the Board of Claims and not a complaint against Chambers, we affirm the circuit court's dismissal.

ALL CONCUR.

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