

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000314-MR

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF CORRECTIONS

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 02-CI-00558

LEE SAETTEL, ADMINISTRATRIX OF THE
ESTATE OF CHARLES KASTELHUN,
DECEASED; and BOARD OF CLAIMS

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE, BUCKINGHAM AND VANMETER, JUDGES.
VANMETER, JUDGE. This is an appeal from an order entered by the
Franklin Circuit Court affirming a decision by the Kentucky
Board of Claims (board) in favor of appellee Lee Saettel,
administratrix of the estate of her father, Charles Kastelhun.
For the reasons stated hereafter, we affirm.

Saettel and appellant Kentucky Department of Corrections agreed to the following stipulation of facts before the board¹:

Alex Bennett entered the Kentucky Correctional system in 1990 for the felony offense of murder. He became a resident at Eastern Kentucky Correctional Complex in May of 1997. He transferred to that correctional facility where he worked as a sewing machine operator in Correctional Industries. He was assigned a cellmate and they lived among the general population. He had no history of fighting, assaultive or threatening behavior or any other institutional violence. In April of 1997, he had been found with and convicted of possession of contraband, i.e, an allen wrench, sharpened to what appeared to be a screwdriver.

On September 17, 1998 Inmate Bennett resigned his job with Correctional Industries. On that day he told a Correctional Industry supervisor that he was like a wild animal and that he needed to be caged before he killed someone or something. He indicated that he felt he could strangle his roommate. He was immediately placed in the Administrative Control Unit where he remained for 45 days - until November 1, 1998. Custody in the Administrative Control Unit involves isolation of Inmate Bennett from the general population and placement in a single cell for 23 hours a day. All meals are served in the cell. Contact with anyone other than the staff that works in that Unit is strictly limited. On September 18, 2000 [sic] he was seen and evaluated by Mark Sparkman, a clinical psychologist because . . . of the statements he made the day before. Mark Sparkman determined that there was no reason to believe that Inmate Bennett was a threat and removed him

¹ The appendices to the parties' briefs contain copies of a different, unsigned version of the stipulation of facts. The version which we quote was signed by attorneys for both parties and was included in the board's record at page 1153. The minor variations between the two versions are not material to our decision on appeal.

from 15-minute behavior watch. Mr. Sparkman's evaluation summary concluded that Inmate Bennett made his statements of September 17, 1998 to manipulate a transfer away from Eastern Kentucky Correctional Complex to the Kentucky State Penitentiary. During his 45 days in the Unit, Inmate Bennett did not make any statement or engage in any behavior that would indicate that he would present a danger to any staff or fellow inmates.

Inmate Bennett was released from the Unit on November 1, 1998 and assigned to the same cell as Charles Kastlehun [sic].

Charles Kastlehun [sic] entered the Kentucky Correctional system in February of 1998 for the felony offense of driving under the influence fourth or subsequent offense. He became a resident of Eastern Kentucky Correctional Complex on October 30, 1998. He was transferred to that facility to receive mental health treatment. He had a history of depression.

They were cellmates for 10 days. Neither Charles Kastlehun [sic] nor Alex Bennett reported any form of difficulty to corrections officials. On November 10, 1998, Alex Bennett reported to corrections officials that he caused the death of Charles Kastlehun [sic] using a homemade knife that he claims had been stored in his television set.

After a hearing, the board concluded that appellant had reasonable grounds to apprehend the danger to Kastelhun, and that appellant was negligent in its duty of care to Kastelhun. The board found that prior to his death, Kastelhun had a life expectancy of 28.64 years which, when multiplied by an annual minimum wage of \$10,712, resulted in lost future wages in the amount of \$306,791.68. Since \$100,000 was the maximum which the

board could award under KRS 44.070(5) when the claim was filed in 1999, Kastelhun's estate was awarded \$100,000 against appellant. The circuit court affirmed and this appeal followed.

First, appellant contends that the trial court erred by failing to find that the board exceeded its authority by awarding lost future wages in the circumstances below. We disagree.

The complaint which Saettel filed before the board sought damages

in an amount to compensate her for all items allowed under the Kentucky Board of Claims Act, including but not limited to:

- (a) Charles M. Kastelhun's medical bills;
- (b) Charles M. Kastelhun's loss of future earning capacity;
- (c) Funeral expenses for Charles M. Kastelhun; and
- (d) Plaintiff Saettel's and the Kastelhun family's loss of affection, not to exceed the sum of One Hundred Thousand Dollars (\$100,000.00), exclusive of interest and costs.

Appellant's subsequent interrogatories and Saettel's answers thereto included the following:

5. State the name and address of any hospitals, doctors, psychologists, or mental health professionals who examined or treated the decedent during the last ten years . . .

. . . .

6. Itemize in detail the amount of medical and hospital expenses decedent or his estate

incurred that arose from the incident that forms the basis of your Complaint.

ANSWER: None.

7. Itemize in detail each amount claimed by you for all other damage (other than medical and hospital) sustained as a result of the incident, including but not limited to, physical and mental pain, past and future loss of wages, etc.

ANSWER:

Funeral expenses	\$ 4,000.00 (approx.)
Legal expenses	\$ 7,500.00
Psychologist visits	
by Lee	\$ 500.00
Miscarriage by Lee	\$ 100,000.00
Pain and suffering/ loss of affection	\$ 250,000.00

8. Itemize and identify all benefits, payments, reimbursements, or collateral payments of any kind received by you or paid on your behalf or on the decedent's behalf for damages you claim to have incurred as a result of this matter.

ANSWER: None

9. State decedent's employment history for the past ten years, up to the date of his death . . . :

ANSWER:

Hoechst Celanese a/k/a Hoechst Ticoma
1974-1996
Plant controller (1988-96), \$80,000
(approx.) per year
Manager of budgeting, reporting and
financial analysis (1981-1988)
Plant accountant, international accountant,
financial analyst (1974-1981)

Remke Supermarket
1997 (approx. 1 year)
Florence, Kentucky

(Emphasis added.) Saettel's interrogatory answers were not supplemented prior to the board's hearing.

Appellant asserts that the board erred below by failing to exclude evidence regarding Kastelhun's lost future wages since Saettel's interrogatory responses failed to list any amount for that element of damages. Appellant relies on *Fratzke v. Murphy*, Ky., 12 S.W.3d 269 (1999), and *LaFleur v. Shoney's Inc.*, Ky., 83 S.W.3d 474 (2002), which indicate that if a plaintiff has been requested to respond to interrogatories identifying each item of unliquidated damages sought by the plaintiff, any award at trial for unliquidated damages may not exceed "the last amount stated in answer to interrogatories." CR 8.01(2). Further, a plaintiff may not attempt to supplement answers to interrogatories once a trial has begun, or after the last date provided by the trial court for the parties' exchange of information regarding the types and amounts of claims for damages, although "nothing in the rules precludes a trial court from entertaining a motion to supplement answers to interrogatories after trial has commenced." *Fratzke*, 12 S.W.3d at 272. The plaintiff who seeks to supplement interrogatory answers bears the burden of showing "that the increase in the amount of unliquidated damages claimed does not prejudice the defendant." *LaFleur*, 83 S.W.3d at 480.

In the particular circumstances before us, we are not persuaded by appellant's contention that the claim relating to Kastelhun's lost future wages was affected adversely by Saettel's responses to appellant's interrogatories. Although appellant in essence argues that the claim for lost future wages was waived when Saettel failed to list that item of damages in response to appellant's interrogatory number "7," a closer review of the interrogatories as a whole, particularly those immediately before and after number "7," shows that the other interrogatories specifically referred to expenses of the "decedent," while number "7" referred to amounts claimed by "you." Thus, on its face interrogatory number "7" was ambiguous as to whether it sought a listing of Kastelhun's damages, or a listing of damages suffered by the person answering the interrogatories, i.e., Saettel.

The fact that Saettel interpreted and answered the question as referring to her own personal damages is clearly shown by the fact that her answer to number "7" addressed items not listed in the original claim for \$100,000 under KRS 44.070(5). Instead, not only did the damages listed in response to number "7" greatly exceed \$100,000, but they clearly were personal to Saettel as they addressed her own psychological treatment, miscarriage, and loss of affection. Nevertheless, appellant did not request a clarification of Saettel's answer or

submit additional interrogatories to address the issue of Kastelhun's damages. Given the ambiguity of interrogatory number "7," it follows that the claim for Kastelhun's lost future wages was not affected in any way by Saettel's failure to address that claim in response to the interrogatory. In any event, even if number "7" was interpreted as applying to Kastelhun's damages, no harm occurred as a result of the board's award of damages for lost future wages since the total amount awarded was the same as the amount claimed in the complaint, and it was less than that claimed in response to the interrogatory. See *Thompson v. Sherwin Williams Co., Inc.*, Ky., 113 S.W.3d 140, 144 (2003). As recently stated in *Thompson, id.* at 144, "the purpose and the only requirement of CR 8.01(2) is that information be furnished as to the 'amount claimed' in unliquidated damages, not an itemization of each category of unliquidated damages for which that amount is claimed."

Moreover, although it cannot be predicted with certainty whether Kastelhun would have returned to steady, full time employment if he had survived prison, it is undisputed that he had a long work history of full time employment, including some twenty-four years as a controller and accountant for an industrial chemical business which paid him as much as \$80,000 per year, followed by employment in a grocery store at minimum wage. As noted by the board, Kastelhun's remaining life

expectancy of 28.64 years, multiplied by an annual minimum wage of \$10,712, resulted in \$306,791.68 or several times the \$100,000 maximum damages which could be awarded under the Board of Claims Act. Given Kastelhun's work history and life expectancy, it clearly was not unreasonable for the board to conclude that he could work at minimum wage employment. Hence, the board did not abuse its discretion by awarding Kastelhun's estate \$100,000 for lost future wages.

Next, appellant contends that the trial court erred by finding that substantial evidence supported the board's determination that appellant was negligent in its care and treatment of Kastelhun, leading to his death at the hands of Bennett. We disagree.

The parties stipulated that Bennett had been incarcerated since 1990 for murder, but that he did not have a history of institutional violence. However, on September 17, 1998, Bennett resigned his prison job and, according to the stipulation, told a supervisor "that he was like a wild animal and that he needed to be caged before he killed someone or something. He indicated that he felt he could strangle his roommate." Bennett was immediately placed in solitary segregation, and on the following day he was seen and evaluated by the prison's clinical psychologist. Concluding that Bennett was not a threat and that his threatening statements were

intended to manipulate a transfer to another prison facility, the psychologist removed Bennett from the previously imposed fifteen-minute behavior watch. After 45 days without threatening remarks or behavior, Bennett was released from segregation and was assigned to Kastelhun's cell. Although neither man reported any difficulties to prison authorities, Bennett used a homemade shank to brutally murder Kastelhun some ten days later.

The record supports the board's findings that although Bennett did not directly indicate to the prison psychologist on September 18 why he made the threatening statement on September 17, Bennett did state that the psychologist had better get him to Eddyville "or else." The psychologist testified that he later learned that Bennett's reason for wanting the transfer was that "his lover was at Eddyville." Although Bennett was not reevaluated by the psychologist, he was released from segregation and was placed in an orientation unit cell with Kastelhun, based primarily on similarities in age and race, even though Kastelhun was a nonviolent offender who would have been a minimum-security inmate but for concerns about his mental health.

Moreover, the record supports the board's findings that although Bennett provided inconsistent information about the length of time he possessed the shank prior to the murder,

he consistently admitted that he had hidden the shank in the back of his television. Although no evidence of tampering was noted during the television's inspection before it was placed in storage when Bennett entered segregation in September 1998, a reinspection after Kastelhun's death revealed signs of exterior tampering, as well as the fact that a six-inch piece of velcro was attached to the inside back of the television.

After reviewing the evidence, the board concluded:

9. The Corrections Cabinet's duty with respect to safety of the inmates is to maintain them in a reasonably safe environment. "It is well-settled law in this and most other jurisdictions that the keeper of the prison must exercise ordinary care for the protection of his prisoner, if there is reasonable ground to apprehend the danger to the prisoner[.] *Bartlett v. Commonwealth of Kentucky*, Ky., 418 S.W.2d 225 (1967).

. . . .

From testimony in this case, at the time of the claimant's murder, the Defendant had "reasonable ground to apprehend the danger" [of] notice of threats by inmate Bennett of wanting to kill someone. Corrections inspections were concluded, but did not discover the murder weapon, the shank hidden in Bennett's T.V. set for five to seven years. Corrections were [sic] negligent in its duty, with notice of the particular danger the claimant faced. Corrections did not even follow its own policy of 30-day psychological reviews of persons in segregation before releasing Bennett.

Contrary to appellant's claim, substantial evidence supported the board's findings and conclusion that appellant was a state

actor which was negligent in its duty of ordinary care toward a prisoner in its custody, resulting in his death. See *Fryman v. Harrison*, Ky., 896 S.W.2d 908 (1995); *Kentucky Commission on Human Rights v. Fraser*, Ky., 625 S.W.2d 852, 856 (1981); *Bartlett v. Commonwealth*, Ky., 418 S.W.2d 225 (1967). Moreover, the board was not collaterally estopped from reaching this decision because of the prior dismissal of Saettel's federal constitutional claims against appellant and its employees. The dismissal of the federal claim turned on the lack of evidence to show that appellant and prison employees were deliberately indifferent to a substantial and foreseeable risk of serious harm to Kastelhun. Since the claim now before us turns instead on simple negligence, the issues were not identical and Saettel was not estopped from pursuing this claim before the board. Hence, the trial court did not err by affirming the board's order. See *McNutt Construction/First General Services v. Scott*, Ky., 40 S.W.3d 854 (2001); *American Beauty Homes Corporation v. Louisville and Jefferson County Planning and Zoning Commission*, Ky., 379 S.W.2d 450 (1964).

The circuit court's order is affirmed.

EMBERTON, CHIEF JUDGE, CONCURS.

BUCKINGHAM, JUDGE, CONCURS AND FILES SEPARATE OPINION.

BUCKINGHAM, JUDGE, CONCURRING: I concur with the majority opinion, but I desire to write separately to express my

view on the Fratzke issue. The majority concludes that Interrogatory No. 7 was ambiguous in that it was unclear whether it sought a listing of Kastelhun's damages or a listing of damages suffered by the person answering the interrogatories. When the interrogatory requested an itemization of damages "claimed by you," it requested the information from the person answering the interrogatories. However, I read the word "you" to mean Saettel in her capacity as administratrix of her father's estate, and not Saettel individually.

The claim was filed by Saettel in her capacity as administratrix of her father's estate and was not filed by her in her individual capacity. Therefore, the propounder of the interrogatories had no reason to request the information from Saettel individually, and Saettel had no reason to provide such information as to any personal damages she may have incurred. Nonetheless, in light of her answers and the Commonwealth's failure to follow up seeking clarification of her answers, I will concur with the majority's determination that the interrogatory was ambiguous. This case is evidence of yet another "buried landmine" predicted by Chief Justice Lambert in his dissenting opinions in the Fratzke and LaFleur cases.

BRIEF AND ORAL ARGUMENT FOR
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