

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-002297-MR

RODERICK L. KNIGHT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 00-CI-002256

UNIVERSITY OF LOUISVILLE HOSPITAL, INC.;
UNIVERSITY MEDICAL CENTER (UMC); GALEN OF
VIRGINIA, INC.; DR. ROYCE COLEMAN, M.D.;
DR. REGULO J. TOBIAS, M.D.; CORRECTIONAL
MEDICAL SERVICES, INC.; JEFFERSON COUNTY
CORRECTIONS DEPARTMENT; MCNEIL-PPC, INC.;
AND ABBOTT LABORATORIES, INC.

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, KELLER, AND MOORE, JUDGES.

CLAYTON, JUDGE: This action is an appeal from the Jefferson Circuit Court's dismissal of the Appellant, Roderick Knight's, case against the Appellees.

Mr. Knight brought this action in Jefferson Circuit Court asserting various tort claims against the defendants stemming from the prescribing of Motrin to him. He

contends that said prescription caused him to have renal and kidney failure resulting in permanent physical damage. The appellees in this action are University of Louisville Hospital, Inc., University Medical Center (UMC), Galen of Virginia, Inc., Dr. Royce Coleman, M.D., Dr. Regulo J. Tobias, M.D., Jefferson County Corrections Department, Correctional Medical Services, Inc., McNeil-PPC, Inc. and Abbott Laboratories, Inc.

FACTUAL PROCEDURAL HISTORY

On March 29, 1995, Mr. Knight suffered a fall while working at the University of Louisville Hospital (“University Hospital”) which is operated by Galen of Virginia, Inc. As a result of the fall, he was prescribed Motrin in a prescription rather than over-the-counter strength. He contends that the treating physicians did not properly take, obtain, or recognize his medical history in prescribing him Motrin.

Mr. Knight contends that he suffered from high blood pressure and hypertension and that said condition was exacerbated by the prescription to the point that he developed renal failure and that he underwent unnecessary surgery to remove his appendix as a result of the prescription.

After Mr. Knight’s discharge from the hospital, he was arrested on domestic violence charges and incarcerated in the Jefferson County Jail under the direction of the Jefferson County Corrections Department (the “Department”). While in custody, Mr. Knight’s medical condition and prescription medication were verified through University Hospital, but his medical history was not taken. It was during his incarceration that Mr. Knight’s appendix was removed. After this surgery, he was returned to the Jefferson County Jail. He continued to receive Motrin and eventually developed acute renal failure and was hospitalized again. The Department moved to

dismiss the action against it under the doctrine of sovereign immunity and the trial court granted the motion.

Dr. Regulo J. Tobias (“Dr. Tobias”) made a Motion to Compel Mr. Knight to answer and respond to Interrogatories and Requests for Production of Documents. On August 21, 2000, the trial judge ordered Mr. Knight to tender full and complete responses to the written discovery which had been propounded within ten days of the entry of his Order.

On October 30, 2000, Mr. Knight’s counsel asked to withdraw from the case citing medical issues and a conflict between himself and his client as grounds. The trial judge granted his Motion and Mr. Knight then proceeded without counsel.

In December of 2000, Dr. Tobias moved the trial court to dismiss Mr. Knight’s action against him due to his failure to comply with the court’s Order compelling him to respond to discovery. The trial court granted the Order of dismissal citing Mr. Knight’s willfulness in not complying with discovery as its grounds for dismissal.

On July 26, 2001, Mr. Knight filed a Notice of Appeal with this Court attempting to appeal the Order denying Plaintiff’s Motion for Relief from Judgment pursuant to Kentucky Rules of Civil Procedure (CR) 60.02, which was entered by the trial court on May 22, 2001. This Court denied his appeal as the judgment of the trial court was not final.

DISCUSSION

Mr. Knight first asserts that the trial court erred in dismissing his action against the Department. As set forth above, the trial court granted the Department’s Motion to Dismiss on the basis of sovereign immunity. Whether an appellee is

protected by sovereign immunity is a question of law which is subject to *de novo* review. *Jefferson County Fiscal Court v. Pearce*, 132 S.W. 3d 824 (Ky. 2004); *Estate of Clark ex rel. Mitchell v. Daviess County*, 105 S.W.3d 841 (Ky. App. 2003).

In *Franklin County, Kentucky v. Malone*, 957 S.W.2d 195 (Ky. 1997), the Court held that a county has immunity to the same extent as the Commonwealth. Where there is a governmental responsibility and the discharge of that responsibility, there is immunity even if the act is claimed to have been negligent. This is not, however, true for intentional acts.

Mr. Knight contended that the Department was negligent in continuing to give him prescription Motrin after he was incarcerated. The actions taken by the Department in this case were clearly governmental in nature. Therefore, any negligence associated with the discharging of these acts falls under the doctrine of sovereign immunity and the trial court was correct in dismissing the action against the Department. Mr. Knight is correct in his assertion that only the Board of Claims would have jurisdiction over negligence actions on the part of the Department and any action should have originated there rather than in circuit court.

Next, Mr. Knight contends the trial court erred in dismissing his action for failing to comply with discovery requests. “The Civil Rules prescribe a practical pattern for the conduct of litigation and the effective administration of justice. To this end reasonable compliance is necessary. The proper application and utilization of those Rules should be left largely to the supervision of the trial judge” *Naive v. Jones*, 353 S.W.2d 365, 367 (Ky. 1961). In *Greathouse v. American National Bank and Trust*

Co., 796 S.W. 2d 868 (Ky. App. 1990), the Court found that willfulness may be found where a party has the present ability to comply with discovery, but fails to do so.

In this action, Mr. Knight was given ten (10) days to comply with the discovery request. He was represented by counsel at the time. The trial judge did not dismiss the action for another four (4) months. Clearly, the dismissal was warranted given Mr. Knight's failure to adhere to the trial court's rulings. Thus, the trial judge did not err in dismissing the action.

The Order of dismissal is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEFS FOR APPELLEES

Roderick L. Knight, *pro se*
Louisville, Kentucky