

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001209-MR

JACQUELINE RANKIN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BRIAN C. EDWARDS, JUDGE  
ACTION NO. 08-CI-004564

JEFFERSON SPECIAL POLICE, INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, COMBS, AND VANMETER, JUDGES.

CLAYTON, JUDGE: Jacqueline Rankin appeals both the Jefferson Circuit Court's denial of the amended, proposed jury instructions, and also its denial of a motion for a new trial. In addition, the Jefferson Special Police (hereinafter "JSP") cross-appeal the Jefferson Circuit Court's denial of its summary judgment and/or directed verdict motions. By order entered on September 12, 2013, the Court

dismissed JSP's cross-appeal. After careful consideration, we now affirm the trial court on the direct appeal.

#### FACTUAL AND PROCEDURAL BACKGROUND

On June 15, 2007, Rankin and a friend attended a concert at Freedom Hall, which is located on the premises of the Kentucky State Fairgrounds in Louisville, Kentucky. The promoters for the concert had entered into a lease agreement with the Kentucky State Fair Board to host the Rowdy Friends Tour, which featured Hank Williams, Jr. and Lynyrd Skynyrd.

JSP is a security and staffing company that provides personnel for concerts and similar events. It made a bid to the Fair Board for the contract to provide security guards, ushers, and ticket takers for the concert, and the bid was successful. JSP and the Fair Board then entered into a contract whereby JSP would provide security and ushers for the concert. The bid specified the number of personnel. Although JSP was familiar with what was required having worked other events there, the Fair Board determined the duties of JSP.

After the opening act concluded, Rankin and her friend decided to use the restroom. Rankin followed her friend down the stairs, and when Rankin was near the bottom of the stairs, she slipped and fell in a puddle of vomit. As a result of the fall, Rankin fractured her ankle. On April 23, 2008, Rankin filed a complaint in Jefferson Circuit Court alleging general negligence against several defendants including JSP. On June 15, 2007, the trial court granted Rankin's

motion to file an amended complaint. Neither complaint, however, claimed negligent supervision or negligent training on the part of JSP.

Eventually, all the defendants, except JSP, were dismissed from the case. On July 8, 2009, JSP moved for summary judgment, which the trial court denied. JSP made a motion for reconsideration of summary judgment, which the trial court also denied. A trial was held on August 3, 2010, and resulted in a hung jury and a mistrial. During the trial, at the close of proof, JSP made a motion for a directed verdict based on, among other things, that it owed no duty to Rankin. The motion was denied. Furthermore, during the first trial, Rankin never sought jury instructions based on negligent supervision and training.

After the mistrial, the matter was retried on March 1, 2011. Seven days prior to the commencement of the second trial, on February 22, 2011, Rankin submitted proposed amended jury instructions. These jury instructions presented the legal theories of negligent training and supervision. But the filing of the proposed jury instructions occurred after the trial court's deadline for the submission of proposed jury instructions. In fact, Rankin never sought to modify her original amended complaint at anytime during the first trial or before the second trial. Accordingly, the amended complaint never asserted claims for negligent supervision or negligent training.

Similar to the original trial, at the close of proof, JSP made a motion for a directed verdict, stating again, that it owed no duty to Rankin. The directed verdict motion was denied. On March 3, 2011, the jury returned a unanimous

verdict in favor of JSP. The trial court's final judgment was entered on March 11, 2011.

Thereafter, Rankin filed a motion for a new trial, arguing that because the trial court failed to instruct the jury on negligent training and supervision, she was entitled to another trial. In an opinion and order entered on June 9, 2011, the trial court denied the motion and supported its reasoning with the following analysis. First, it stated that the pleadings in the matter failed to adequately provide notice to JSP of the proposed claims for negligent training and supervision. Next, the trial court observed that its decision was supported by the jury's verdict, which determined that JSP was not the causative factor in Rankin's injury. Lastly, the trial court explained that new trials are granted only in the most extreme circumstances, which was not the case here.

Rankin now appeals from the March 11, 2011 judgment and the June 9, 2011 order denying the motion for a new trial.

#### ANALYSIS

The legal underpinning of this litigation is Rankin's claim that JSP, a third-party contractor of the Kentucky State Fair Board, had sufficient control over the premises where she slipped to owe a duty to her. JSP responds that it is a private security and usher company, which provides personnel to the Kentucky State Fair Board and acted under its control. Hence, JSP maintains it was not liable to Rankin for her fall. Since the case began, the parties had been arguing under theories of general negligence. It was not until Rankin proposed amended

jury instructions, which implicated negligent training and negligent supervision, that the discussion changed from general negligence.

A review of the denial of a motion for a new trial is performed under the abuse of discretion standard. Consequently, such a decision will not be disturbed unless it was clearly erroneous. *McVey v. Berman*, 836 S.W.2d 445, 448 (Ky. App. 1992).

On appeal, Rankin asserts that she is entitled to a new trial because the trial court judge's denial of the proposed jury instructions about negligent training and supervision rendered her unable to effectively plead her case and caused prejudicial error to her.

Rankin admits that allegations of negligent training and supervision were not specifically alleged in the amended complaint. Nevertheless, she maintains that the amended complaint provided adequate notice of these claims. Furthermore, countering the trial court's reasoning that allowing these instructions would have been unfair to JSP, Rankin argues that the rules of notice pleading under the Kentucky Rules of Civil Procedure (CR) do not require her to precisely identify negligent training and supervision in the complaint.

In response, JSP observes that Rankin first mentioned these claims shortly before the commencement of the second trial, in jury instructions rather than pleadings. Consequently, it argues that she did not sufficiently nor timely plead these two causes of action. As a result, JSP posits that it did not have an adequate opportunity to take discovery or prepare for trial. Second, JSP contends

that, given the jury's verdict, the inclusion of the proposed jury instructions would not have changed the outcome.

Pursuant to CR 8.01, pleadings must contain "a short and plain statement of the claim showing that the pleader is entitled to relief...." The rule does not require that to state a claim one must do so with technical precision. Rather, under this rule, the complaint must give a defendant fair notice as well as identify the claim. *Cincinnati, Newport & Covington Transp. Co. v. Fischer*, 357 S.W.2d 870, 872 (Ky. 1962). Still, although CR 8.01 merely requires that a complaint contain a "short and plain statement of the claim," it does not obviate the claimant's responsibility to state the entitled relief upon which the claim is based. *See O'Rourke v. Lexington Real Estate Co. L.L.C.*, 365 S.W.3d 584, 587 (Ky. App. 2011).

The torts of negligent training and supervision were first recognized in *Smith v. Isaacs*, 777 S.W.2d 912, 914 (Ky. 1989). They are separate torts from general negligence. Returning to the requirements for notice pleading, while it is not necessary to state a claim with technical precision, it is mandatory to identify the nature of a claim and provide fair notice to the other side.

The Kentucky Supreme Court in *Grand Aerie Fraternal Order of Eagles v. Carneyhan*, 169 S.W.3d 840, 844 (Ky. 2005), gave guidance on the requirements for pleading a claim of negligent supervision. The Court stated that "the plaintiff must allege that the defendant knew or had reason to know of the employee's harmful propensities; that the employee injured the plaintiff; and that

the hiring, supervision, or retention of such an employee proximately caused the plaintiff's injuries.” To effectively plead a case of negligent supervision, the plaintiff must establish these elements.

In the case at bar, the simple question is whether a pleading alleging general negligence alludes adequately to a claim of negligent training and negligent supervision. The first time that Rankin alleged negligent training and supervision was in February 22, 2011, when she tendered amended and proposed jury instructions supporting these legal theories. Jury instructions, however, are not pleadings. So, submission of the proposed jury instructions was not a sufficient or proper avenue to give notice of such claims.

Further, as noted, these claims have specific elements that must be established. Here, regarding the negligent supervision, as well as training, Rankin did not allege in the complaint that JSP knew that their supervision or training was so derelict that the employee was not trained or supervised properly and/or that this lack of training or supervision caused the employee to injure the party. In the complaint, Rankin alleges negligence and states “[p]laintiff was injured as a result of the negligence of the defendants . . . their officers, agents, and employees operating within the scope of their employment.”

Thus, given the wording in the amended complaint, we are not persuaded that it gave JSP sufficient, or for that matter, any notice that she intended to claim negligent training and/or supervision on the part of JSP. Consequently, we concur with the trial court's decision to deny the admission of

these instructions as untimely and failing to provide JSP with the opportunity to prepare adequately for the trial.

Our decision is bolstered by the jury verdict in favor of JSP. The impact of the jury verdict is significant. The jury determined that JSP did not violate its duty or, if it did, the violation was not a substantial factor in causing Rankin's injury. Therefore, the jury determined that JSP was not liable for Rankin's injury. Given this determination, negligence in training or supervising would also not be implicated because for JSP to be liable, its employee's action must be the proximate cause of the harm. But the jury decided that JSP had no liability, which in essence means that JSP, through its employees, could not have been the proximate cause of the injury. Hence, we conclude that the trial court's decision to deny the motion for a new trial was not an abuse of discretion.

Accordingly, the judgment of the Jefferson Circuit Court denying Rankin's motion for a new trial is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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