

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2011-CA-001672-MR

WAYNE COUNTY DETENTION CENTER

APPELLANT

v. APPEAL FROM WAYNE CIRCUIT COURT  
HONORABLE VERNON MINIARD, JR., JUDGE  
ACTION NO. 08-CI-00372

KENNETH MYERS AND  
BARTON SWEET

APPELLEES

OPINION AND ORDER  
DISMISSING

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BEFORE: CAPERTON, COMBS AND NICKELL, JUDGES.

NICKELL, JUDGE: The Wayne County Detention Center (jail) appeals from an order of the Wayne Circuit Court denying its motion for summary judgment. The order stated no reason for the denial and did not include finality language. Upon

review, we have determined this appeal is taken from an interlocutory order and, therefore, must be dismissed.

On October 19, 2007, Kenneth Myers was lodged in jail. His cellmate was Barton Sweet. According to Myers, Sweet came to his bunk and repeatedly assaulted him with his fist<sup>1</sup> as he slept, fracturing his cheekbone and left orbital floor. Myers' injuries and subsequent medical care are well-documented but how he received the injuries is open to debate. Sweet denied hitting Myers; another prisoner, Travis Keith, admitted hitting Myers because of remarks Myers had made.

In his amended<sup>2</sup> complaint, Myers alleged the jail had failed to protect him and ensure compliance with jail regulations. In particular, he alleged he was a county prisoner, Sweet was a state prisoner, and the two were not to be housed in the same cell. Sweet filed an answer denying he had hit Myers and claiming he was a county inmate. Sweet also alleged that Myers had told three versions of the event and Keith had admitted injuring Myers. The jail filed an amended<sup>3</sup> answer alleging Myers' injuries were beyond its control; the claims were barred by sovereign immunity, governmental immunity and official immunity; and urging dismissal of the complaint.

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<sup>1</sup> In a statement given on October 22, 2007, Myers said Sweet did not use a weapon, only his fist. In his complaint, however, he alleged Sweet hit him repeatedly about the face with a lock.

<sup>2</sup> The original complaint lacked a certificate of service and verification.

<sup>3</sup> The original answer was a bare bones denial of the allegations.

After receiving Myers' answers to interrogatories, the jail moved for summary judgment alleging there were no genuine issues of material fact and the jail was not liable to Myers. In its supporting memorandum of law, the jail stated there was no known problem between Myers and Sweet, and the jail, as a county entity, was immune from tort liability. Myers responded to the summary judgment motion highlighting several factual issues to be resolved under *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). The jail's reply noted that Myers had not addressed its claim of immunity.

On August 15, 2011, the trial court entered an order stating in its entirety:

This matter having come before the Court upon a Motion for Summary Judgment filed by the Defendant, Wayne County Detention Center, and the Court being otherwise fully and sufficiently advised:

**IT IS HEREBY ORDERED**, that the Motion for Summary Judgment filed by the Defendant, Wayne County Detention Center, is hereby overruled.

**GIVEN UNDER MY HAND**, as Judge of the Wayne Circuit Court, on this 15 day of August, 2011.

The jail did not ask the court to make specific findings explaining the reasons it denied the summary judgment motion. Instead, on September 12, 2011, it simply filed its notice of an interlocutory appeal. For the following reasons, we dismiss the appeal.

As an appellate court, we review “final order[s] adjudicating all the rights of all the parties in an action or proceeding[.]” CR<sup>4</sup> 54.01; *Breathitt County Board of Education v. Prater*, 292 S.W.3d 883, 886 (Ky. 2009). An order denying a summary judgment motion, however, is not final and therefore, is not appealable. *Gumm v. Combs*, 302 S.W.2d 616, 617 (Ky. 1957).

The jail urges us to make an exception in this case because it claims to be immune from tort liability. *Prater* recognized immunity is a unique defense

meant to provide not merely a shield against liability but a shield against the expense and potential harassment of trial as well. A trial court's order denying immunity would prove effectively unreviewable on appeal from a final judgment, [ . . . ] because by that time the movant's interest in avoiding litigation would be lost beyond the appellate court's ability to provide a meaningful remedy.

The jail argues that going forward with trial, when the case should have been dismissed on grounds of immunity, will cause it to unnecessarily incur the costs of trial. The jail’s argument would have merit if the trial court had specifically denied its motion for summary judgment because it was not insulated by the cloak of immunity, as did the trial court in *Prater*. But here, the order denying summary judgment to the jail stated no grounds for the denial and the jail took no steps to have the trial court correct this flaw. Furthermore, the order did not include the finality language required by CR 54.02. Even the jail admits in its brief that the trial court did not make a specific ruling on immunity.<sup>5</sup>

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<sup>4</sup> Kentucky Rules of Civil Procedure.

<sup>5</sup> The jail cites us to three Kentucky Court of Appeals unpublished cases. Two were dismissed because there was no specific finding on immunity in the order denying motions for summary

Accordingly, this appeal is DISMISSED.

ALL CONCUR.

ENTERED: September 28, 2012

/s/ C. Shea Nickell  
Judge, Kentucky Court of Appeals

BRIEFS FOR APPELLANT:

Winter R. Huff  
Monticello, Kentucky

BRIEF FOR APPELLEE, KENNETH  
MYERS:

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judgment. In the third, the trial court held a county jailer was not entitled to qualified official immunity. The cases do not support the jail's position. Pursuant to CR 76.28(4)(c), unpublished opinions are not binding precedent. Furthermore, we deem *Prater* to adequately address the issue presented in this appeal.