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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-000127-MR

CARRIE GOODMAN

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE STEVE ALAN WILSON, JUDGE  
ACTION NO. 13-CI-00266

EMILI TROUSDALE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, JONES, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Carrie Goodman brings this appeal from a December 24, 2014, order of the Warren Circuit Court denying Goodman's motion for summary judgment upon qualified official immunity grounds. We affirm.

Goodman was employed as a teacher and as a cheerleading coach at Hart County High School. Emili Trousdale was a student and a cheerleader at Hart

County High School. This case involves injuries Trousdale allegedly suffered while at a practice session on January 23, 2012. Much of the events that transpired on January 23, 2012, are controverted, but it is undisputed that Goodman and a parent transported members of the cheerleading team to Prime Tyme Athletics for a two-hour practice session in Warren County.<sup>1</sup> During this practice session, Trousdale alleged that she fell and struck her head and/or neck approximately three or four times. Trousdale claimed that Goodman was present and witnessed the falls but took no action. Goodman disputed such claims and maintained that she was unaware of Trousdale's alleged falls during the practice session. It was later discovered that Trousdale suffered concussion(s) and ultimately developed difficulty with speaking and walking.

Trousdale filed a complaint against, *inter alios*, Goodman alleging she was negligent and breached myriad ministerial duties by failing to properly supervise the practice session at Prime Tyme and by failing to take proper action each time after Trousdale fell. Goodman answered and subsequently filed a motion for summary judgment. Goodman claimed to be entitled to qualified official immunity as any duty owed to Trousdale was discretionary, performed in good faith, and within the scope of employment.

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<sup>1</sup> Prime Tyme Athletics is located in Bowling Green, Kentucky.

By order entered December 24, 2014, the circuit court denied Goodman's motion for summary judgment. The court concluded that Goodman owed ministerial duties to Trousdale, and viewing the facts most favorable to Trousdale, Goodman either breached said duties by failing to properly supervise the cheerleading practice or by failing to take proper action each time after Trousdale fell. This interlocutory appeal follows.<sup>2</sup>

To begin, summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56; *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476 (Ky. 1991). In ruling upon a motion for summary judgment, all facts and inferences are viewed in a light most favorable to the nonmoving party. *Id.* Our review proceeds accordingly.

Goodman contends that the circuit court committed error by denying her motion for summary judgment. Goodman maintains that she is entitled to qualified official immunity against Trousdale's negligence claims. In particular, Goodman argues that the practice sessions at Prime Tyme were not school practices but rather private individual training sessions. Goodman points out that parents enrolled the individual cheerleaders in the Prime Tyme sessions and were financially responsible for fees related to the sessions. As private individual

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<sup>2</sup> An interlocutory appeal is proper from a summary judgment denying a governmental entity or public official immunity. *Breathitt Cnty. Bd. of Educ. v. Prater*, 292 S.W.3d 883 (Ky. 2009).

training sessions, Goodman asserts that Prime Tyme was solely responsible for supervising the cheerleaders and for taking corrective action after Trousdale's alleged falls. And, even if she possessed a duty to Trousdale, Goodman believes that such duty was discretionary. Specifically, Goodman argues that the supervision of students is a discretionary act and not a ministerial act. Goodman further maintains that the signs of concussion are not always readily apparent and require discretion on the part of a coach. For the reasons hereinafter elucidated, we are of the opinion that Goodman owed Trousdale myriad ministerial duties during the practice session at Prime Tyme and that material issues of fact exist as to whether Goodman breached those duties. We, thus, conclude that Goodman was not entitled to qualified official immunity.

Qualified official immunity operates to bar a negligence action against a public official when sued in his or her individual capacity. *Yanero v. Davis*, 65 S.W.3d 510 (Ky. 2001). To be entitled to the defense of qualified official immunity, the public official or employee must be performing a discretionary act in good faith and within the scope of employment. No immunity exists for performance of a ministerial act. *Id.* Thus, the distinction between a discretionary act and a ministerial act is pivotal.

A discretionary act is one "involving the exercise of discretion and judgment, or personal deliberation, decision, and judgment." *Yanero*, 65 S.W.3d at

522. Conversely, a ministerial act is generally “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.” *Yanero*, 65 S.W.3d at 522.

In the case *sub judice*, the duties imposed upon Goodman, as coach of the cheerleading team, emanate from two sources: Kentucky statutory law and the Kentucky High School Athletic Association (KHSAA) Policies and Procedures. We shall address each source seriatim.

Kentucky Revised Statutes (KRS) 160.445 was specifically designed to address safety in high school athletics, and it contains specific provisions regarding concussions in high school athletics. KRS 160.445 provides, in part:

(2) (a) Beginning with the 2012-2013 school year, and each year thereafter, the state board or its agency shall require each interscholastic coach to complete training on how to recognize the symptoms of a concussion and how to seek proper medical treatment for a person suspected of having a concussion. The training shall be approved by the state board or its agency and may be included in the sports safety course required under subsection (1)(a) of this section.

.....

(3) (a) A student athlete suspected by an interscholastic coach, school athletic personnel, or contest official of sustaining a concussion during an athletic practice or competition shall be removed from play at that time and shall not return to play prior to the ending of the practice or competition until the athlete is evaluated to determine

if a concussion has occurred. The evaluation shall be completed by a physician or a licensed health care provider whose scope of practice and training includes the evaluation and management of concussions and other brain injuries. A student athlete shall not return to play on the date of a suspected concussion absent the required evaluation.

Pursuant to KRS 160.445(2)(a), every interscholastic coach is required to complete training upon how to recognize the symptoms of concussion in a student-athlete.

Further, KRS 160.445(3)(a) mandates a coach to remove any student-athlete “suspected . . . of sustaining a concussion” from practice or competition in order to be medically evaluated.

The KHSAA also enacted comprehensive policies concerning concussions in student athletes and the concomitant duties of coaches. In particular, the Sports Medicine Policy Protocol Related to Concussed Student-Athletes For All Interscholastic Athletics in the Commonwealth of Kentucky (Sports Medicine Protocol) Section (1)(a)(1) reads:

(1) Any athlete who exhibits signs, symptoms, or behaviors consistent with a concussion (such as loss of consciousness, headache, dizziness, confusion, or balance problems) shall be immediately removed from the contest and shall not return to play until cleared by an appropriate health-care professional.

And, the Policy on Concussions During Interscholastic Play in the Commonwealth of Kentucky (Concussion Policy) Section (2)(a) and Section (3)(b) state:

(2)(a) A student-athlete suspected by an interscholastic coach, school athletic personnel or contest official of sustaining a concussion (displaying signs/symptoms of concussion) during an athletic practice or contest shall be removed from practice or play immediately. The student-athlete shall not return to play prior to ending of practice or competition until the student-athlete is evaluated to determine if a concussion has occurred.

....

(3)(b) Coaches must review and know the signs and symptoms of concussion and direct immediate removal of any student-athlete who displays these signs or symptoms for evaluation by appropriate medical personnel.

Under Sports Medicine Protocol Section (1)(a)(1), a student-athlete shall be immediately removed if that student-athlete is exhibiting the signs of a concussion, which include loss of consciousness, headache, dizziness, confusion, and balance issues. And, the Concussion Policy Section (2)(a) specifically directs a coach to immediately remove a student-athlete from an athletic practice or event if the coach suspects such student-athlete has sustained a concussion due to outward signs and symptoms. Similarly, Section (3)(b) of the Concussion Policy particularly mandates that every coach must be knowledgeable as to the “signs and symptoms of concussion” and immediately remove a “student-athlete who displays these signs or symptoms” for medical evaluation.

From the above statutory law and KHSAA’s policies, we are convinced that ministerial duties are imposed upon coaches: (1) to know the signs

and symptoms of concussion, (2) to immediately remove student-athletes suspected of suffering concussion from games or practices, and (3) to immediately remove a student-athlete displaying any of the signs or symptoms of concussion.<sup>3</sup>

We are aware of Goodman’s argument that determination of whether a student-athlete is displaying the signs and symptoms of a concussion constitutes a discretionary act, and if such signs or symptoms are present, the act of immediately removing the student-athlete is ministerial. However, our Supreme Court has recently rejected a very similar argument in *Patton v. Bickford*, \_\_\_\_ S.W.3d \_\_\_\_ (Ky. 2016).

In *Patton*, \_\_\_\_ S.W.3d \_\_\_\_, the Supreme Court was faced with a negligence action by the estate of a deceased student against a teacher for failing to report bullying as required by certain school policies. In holding that the reporting of bullying was a ministerial act, the Supreme Court reasoned:

[I]t could be argued that the determination of whether or not bullying is occurring is a discretionary function that then triggers the ministerial duty to report the conduct. Facially speaking, this seems accurate. But our case law disagrees. “That a necessity may exist for the ascertainment of . . . facts does not operate to convert the act into one discretionary in nature.” And simply because an officer may be permitted a degree of discretion “with respect to the means or method to be

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<sup>3</sup> When we refer to “KHSAA policies” in this Opinion, we are specifically referencing the Sports Medicine Policy Protocol Related to Concussed Student-Athletics for all Interscholastic Athletics in the Commonwealth of Kentucky Section (1)(a)(1) and the Policy on Concussions During Interscholastic Play in the Commonwealth of Kentucky Section (2)(a) and Section (3)(b).



employed” does not strip away the ministerial nature of the duty.

Id. at \_\_\_\_\_. (Citations omitted.)

Likewise, in this case, the identification of the signs/symptoms of a concussion is not discretionary; the student-athlete either is displaying such symptoms or is not. It is not a matter of discretion but represents a ministerial duty upon the coach.

And, we are unpersuaded by Goodman’s contention that the duties set forth in KRS 160.445(3)(a) and the above KHSAA’s policies were inapplicable because the practice session took place at Prime Tyme. In particular, Goodman maintains that the practice session at Prime Tyme was not a practice within the meaning of KRS 160.445 or the KHSAA’s policies. KRS 160.445(3)(a) and the KSHAA policies use the general terms “athletic practice” or simply “practice.” Considering that Goodman set up the practice sessions at Prime Tyme, transported cheerleaders to the practice sessions and attended the two-hour sessions, we believe the practice sessions at Prime Tyme qualify as athletic practices or practices within the meaning of KRS 160.445 and KHSAA’s policies. From Goodman’s own depositional testimony, Goodman was not a disinterested third party at the practice sessions but attended the practice sessions as coach of the cheerleading team. In such an environment, the ministerial duties set forth in KRS 160.445(3)(a) and in the KHSAA’s policies were triggered.

Accordingly, we hold that Goodman was charged with the ministerial duties of knowing the signs/symptoms of concussion and of immediately removing Trousdale from the practice session at Prime Tyme if Trousdale displayed any signs/symptoms of concussion or if Goodman suspected Trousdale of sustaining a concussion. These duties clearly look to disputed material facts in this case. As these are ministerial duties, we conclude that Goodman is not entitled to qualified official immunity and that the circuit court properly denied Goodman's motion for summary judgment.

For the foregoing reasons, the summary judgment of the Warren Circuit Court is therefore affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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