

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

Supreme Court of Kentucky **FINAL**

2003-SC-0953-DG

DATE 1-12-06 E. A. G. G. W. H. D. C.

CHARLES A. KUBAJAK, JR.

APPELLANT

v.

ON REVIEW FROM COURT OF APPEALS
2002-CA-1919
FAYETTE CIRCUIT COURT NO. 01-CI-4506

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Charles A. Kubajak, Jr., claims to suffer from post-traumatic stress disorder sustained as a result of his employment as a police officer for the Lexington-Fayette Urban County Government (LFUCG). He filed both a workers' compensation claim against LFUCG with the Department of Workers' Claims and this civil action against LFUCG in the Fayette Circuit Court. His theory with respect to the civil action is that if his workers' compensation claim is precluded by KRS 342.0011(1) ("Injury . . . shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury."), then his condition is not covered by the Workers' Compensation Act and is not subject to the "exclusive remedy" provision of KRS 342.690(1).

Both the Fayette Circuit Court and the Court of Appeals held that KRS 342.690(1) precluded a civil action by an employee against his/her employer for an unintentional injury even if that injury is not compensable under the Workers' Compensation Act. However, we need not reach this issue because this action is prima facie barred by the doctrine of sovereign immunity. Lexington-Fayette Urban County Gov't v. Smolicic, 142 S.W.3d 128, 131-34 (Ky. 2004).

For that reason, the judgment of the Fayette Circuit Court and the decision of the Court of Appeals are affirmed.

All concur.

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