

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs August 05, 2014

GREGORY EIDSON v. CITY OF PORTLAND, ET AL.

**Appeal from the Circuit Court for Sumner County
No. 2011CV1303 C. L. Rogers, Judge**

No. M2013-02256-COA-R3-CV - Filed December 29, 2014

Plaintiff in suit to recover damages for injuries allegedly suffered in the course of his arrest appeals the grant of the motion to dismiss for failure to state a claim filed on behalf of the City and Police Chief and the grant of summary judgment to the police officers who participated in his arrest. In responding to the motions, plaintiff acknowledged that the claims against City, Police Chief and two of the officers should be dismissed; we affirm the dismissal of those claims and parties. The order granting summary judgment to the remaining officer does not state the legal ground therefor or make findings of fact relative thereto; consequently, we vacate the judgment and remand for further proceedings. We reverse the denial of plaintiff's motion to amend to substitute one of the officers for the defendant named John Doe.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated in Part, Reversed in Part and Affirmed in Part; Case Remanded

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and W. NEAL MCBRAYER, J. joined.

Gregory Eidson, Whiteville, Tennessee, Pro Se.

Robert M. Burns and Patrick J. Gray, Nashville, Tennessee, for the appellees, City of Portland; City of Portland Police Chief, Richard Smith; FTO Chris Jones; Asst. Off. No. 1 aka JD1; and Asst. Off. No. 1 aka JD2.

OPINION

I. FACTUAL BACKGROUND

This appeal arises out of a suit brought by Gregory Eidson against the City of Portland (“City”), Portland Police Chief Richard Smith, Portland Police Officer Chris Jones and two unnamed officers (collectively “the Officers” unless otherwise noted) for the Officers’ conduct during his arrest on October 23, 2010, when the Officers investigated a dispute at the home of Danny Suttle, Mr. Eidson’s uncle.¹ According to the unsworn police statements, the Officers found Mr. Suttle severely beaten and covered in gasoline, and determined that Mr. Eidson was responsible for Mr. Suttle’s injuries; they proceeded to Mr. Edison’s residence, questioned him regarding the altercation, and placed him under arrest. In the course of the arrest, Mr. Eidson was handcuffed and sprayed with mace. Mr. Eidson pled guilty to attempted second-degree homicide and aggravated assault on February 3, 2012.

Mr. Eidson, proceeding *pro se*, filed the instant suit on October 24, 2011, complaining of the manner by which he was arrested and alleging various federal and state constitutional, statutory, and common law claims. Separate answers were filed by the City, Chief Smith, Officer Jones, and Officers 1 and 2.

The City, Chief Smith, and the Officers thereafter moved to dismiss Mr. Eidson’s complaint pursuant to Tenn. R. Civ. P. 12.02(6).² The Officers filed a separate Tenn. R. Civ. P. 56 motion for partial summary judgment, asserting that Mr. Eidson could not prevail on his claims because there was probable cause to arrest him without a warrant, that he was not falsely imprisoned, and that his First, Fifth, and Fourteenth Amendment rights were not violated. In support of the motion, the Officers filed, *inter alia*, a statement of undisputed material facts, their statements,³ Mr. Suttle’s written statement of the altercation, and a copy of Mr. Eidson’s indictment. Mr. Eidson did not respond to either motion or to the statement

¹ In Mr. Eidson’s complaint, the Officers were listed as Chris Jones, “Asst. Off. No.1 aka JD1,” and “Asst. Off. No.2 aka JD2.” On November 22, 2010, during Mr. Eidson’s preliminary hearing, Officer Jones testified that the assisting officers were Nick Hurt and Jason Williams.

² Each answer included the affirmative defense that the complaint should be dismissed if it failed to state a cause of action or any claim for relief; consequently, in filing an answer the defendants did not waive their ability to move to dismiss the action in accordance with Tenn. R. Civ. P. 12.02(6).

³ The unsworn statements of Chris Jones, Jason Williams, and Nick Hurt were attached as exhibits to the Notice of Filing which accompanied the motion; the statements were attested to by Jane Johnson, Custodian of Records of the Portland Police Department, as “true and correct copies of the original affidavits that were attached to the incident report for incident number 10-1573 involving Gregory Eidson and dated October 23, 2010.” There are no sworn affidavits from any of the individual defendants in the record.

of material facts. On March 28, 2012, the court entered an order granting Chief Smith's motion to dismiss⁴, granting the Officers' motions to dismiss in part, and granting them partial summary judgment; the order stated that "[t]he only claims in Plaintiff's complaint that remain against any Defendants are his claims for excessive force and assault." The court gave Mr. Eidson 30 days to amend his complaint if he so desired.

On April 17, 2012, Mr. Eidson filed an amended complaint, which the defendants moved to strike on the grounds that it contained procedural and legal defects and included multiple claims which had previously been dismissed with prejudice; in the alternative, they moved for a more definite statement. On May 9, Mr. Eidson moved the court to vacate the previous order dismissing his claims against City, Chief Smith, and the Officers. On June 15, the court entered an order granting defendants' motion to strike and denying Mr. Eidson's motion to vacate. The court granted Mr. Eidson 30 days to file a second amended complaint to comply with the court's oral ruling; Mr. Eidson did not amend his complaint.⁵

On April 23, 2013, the City and the Officers filed a motion to dismiss the claims of excessive force and assault for failure to state a claim; the Officers also filed a motion for summary judgment asserting that they used a reasonable amount of force during Mr. Eidson's arrest; that they were entitled to qualified immunity; and that they did not assault Mr. Eidson. In support of the motion for summary judgment, the Officers attached a statement of undisputed facts, to which Mr. Eidson responded; the Officers also filed thirteen exhibits in support of their motion.⁶ Of particular significance to this appeal, Mr. Eidson, by that time represented by counsel, filed two responses on May 20; the first agreed to City's second motion to dismiss and the second agreed to the Officers' second motion for summary

⁴ The court certified the order dismissing Chief Smith as a final judgment pursuant to Tenn. R. Civ. P. 54.02. Mr. Eidson did not appeal the order within thirty days.

⁵ The order recites that a hearing was held on June 5 on the motions, at which counsel for all defendants appeared and Mr. Eidson appeared *pro se*. A transcript of the hearing is not included in the record on appeal; consequently, we cannot address any matter raised relative to the court's oral ruling. Inasmuch as Mr. Eidson did not file a second amended complaint, we address the issues on appeal in the context of the original complaint.

⁶ The exhibits included: records from Mr. Eidson's inmate file at the Sumner County Sheriff's Office; Mr. Eidson's motion to dismiss the charges filed against him in the Criminal Court for Sumner County; a progress note regarding Mr. Eidson's emotional and mental health from Mental Health Cooperative, Inc.; excerpts of records regarding Mr. Eidson's mental health from Middle Tennessee Mental Health Institute; the unsworn statements of Chris Jones, Jason Williams, and Nick Hurt; the report of Robert Allen, Head Defensive Tactics Instructor at the Metropolitan Police Training Academy; City's Police Department's policy on the use of chemical weapons; and the January 31, 2013, depositions of Mr. Eidson and Officers Jones, Williams and Hurt.

judgment, except as to Officer Nick Hurt. A hearing on the motions was held on July 8, at which counsel for Mr. Eidson and the defendants appeared; on July 19 the court entered an order granting the City's motion to dismiss and the Officers' motions to dismiss and for summary judgment.

Mr. Eidson, proceeding *pro se*, filed a "Motion to Alter or Amend the 'Order of Dismissal' pursuant to Tenn. R. Civ. P. 59.04 and 60.02(1) and (2) Respectively" on August 16; the court entered an order on August 29 denying the motion. Mr. Eidson appeals.

II. DISCUSSION

Mr. Eidson agreed in his responses that the City's second motion to dismiss and the Officers' second motion for summary judgment should be granted.⁷ In light of his admissions that the claims against the City and Officers Jones and Williams should be dismissed, as well as his failure to timely appeal the dismissal of Chief Smith, the only issues we address are Mr. Eidson's claims for excessive force and assault as presented in Officer Hurt's second motion for summary judgment. *See Spicer v. Kimes*, 156 S.W.2d 334, 337 (Tenn. Ct. App. 1941) ("Parties are bound, and even estopped, by their solemn admissions of record, either in the pleadings or otherwise.").

The order granting the motion for summary judgment, which was prepared by counsel for Officer Hurt, states:

Based upon a review of the record as a whole, those materials filed both in support of [and] in opposition to the afore-referenced motions, and the arguments of counsel, including the arguments of Plaintiff's counsel specifically in opposition to that portion of the Rule 12 and Rule 56 motions

⁷ Mr. Eidson's response to the City's motion to dismiss stated:

Comes the Plaintiff and agrees that the case against the City of Portland should be dismissed.

His response to the Officers' motion stated:

Comes the Plaintiff and agrees that the Defendants, Chris Jones and Jason Williams, should be dismissed as Defendants in this case.

Plaintiff would show that Defendant JD1, Nick Hurt, used excessive force against the Plaintiff.

Plaintiff relies upon his accompanying Memorandum Brief, the Exhibits filed by Defendants, the Deposition of Katherine Britt and the attached photo of Plaintiff taken at the Sumner County Jail during his booking.

of Assistant Officer 1 (JD1), this Court finds that all of Defendants's[sic] motions are well taken, and are therefore and hereby GRANTED.

Based upon this ruling, and this Court's rulings on the companion motions heard by this Court on July 8, 2013, this Court further finds that all of Plaintiff's claims against the Defendants - each of them and collectively, are hereby resolved, and this Case is hereby DISMISSED with prejudice.

Summary judgment is appropriate if no genuine issues of material fact exist, and the movant is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04. Rule 56.04 requires the trial court to "state the legal grounds upon which the court denies or grants the motion, which shall be included in the order reflecting the court's ruling." The requirement that a trial court state the grounds for its decision assures that the court made its own decision and that the parties can be confident that the trial court independently considered their arguments; it also enables appellate courts to discern the basis for the trial court's decision, and "promote[s] independent, logical decision-making." *State v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 316–17 (Tenn. 2014).⁸

The order does not state the legal grounds for the grant of summary judgment, nor does it provide any findings of fact relative to Mr. Eidson's claims for excessive force and assault or the defenses raised by Officer Hurt. Moreover, there is no transcript of the hearing on the motion, a memorandum by the court, or other document stating the legal grounds for summary judgment or making findings relative thereto. In the absence of same, we are unable to discern the basis of the trial court's decision to grant summary judgment to Officer Hurt; the judgment must be vacated and the case remanded for further proceedings.

Mr. Eidson also seeks review of the court's denial of the motion to alter or amend the order of dismissal. With respect to that motion, the court stated:

⁸ There are three ways in which a court may comply with the rule:

First, the trial court may state the grounds for its decision at the same time it announces its decision on the record. Second, the trial court may announce its decision and inform counsel that it will provide the grounds in a subsequently filed memorandum or memorandum opinion. Third, after announcing its decision, the trial court may notify the parties of the grounds for its decision by letter, as long as the letter has been provided to all parties and has been made part of the record.

UHS of Lakeside, Inc., 439 S.W.3d at 316 n.28.

The Motion T.R.C.P. 60.02 is not proper. The Order at issue was entered July 19, 2013. The Motion under T.R.C.P. 60.02 was filed August 16, 2013. This is not a final order.

The Motion to Alter or Amend T.R.C.P. 59.04 contains nothing but further re-argument of the same issues considered and decided by the July 19, 2013 Order and raised by Plaintiff in his previously filed Objection to Order.

Inasmuch as we have vacated the summary judgment granted in favor of Mr. Hurt, the denial of the motion as to Mr. Eidson's claim against him, is moot. With respect to the claims against the other defendants, we agree with the court's disposition.

The purpose of a Rule 59.04 motion is to provide the trial court with an opportunity to correct errors before the judgment becomes final. *In re M.L.D.*, 182 S.W.2d 890, 895 (Tenn. Ct. App. 2005) (citing *Bradley v. McLeod*, 984 S.W.2d 929, 933 (Tenn. Ct. App. 1998)). The motion should be granted when the controlling law changes before the judgment becomes final; when previously unavailable evidence becomes available; or to correct a clear error of law or to prevent injustice. *Id.* A trial court's determination of whether to grant a Rule 59.04 motion to alter or amend a judgment is reviewed under an abuse of discretion standard. *Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003).

The abuse of discretion standard does not allow this Court to substitute the panel's judgment for the judgment of the trial court. We will uphold the decision of a trial court so long as reasonable minds can disagree about its correctness, and will set aside the court's decision only if the court has applied an incorrect legal standard or has reached an illogical or unreasoned decision that causes an injustice to the complaining party.

Lindsey v. Lambert, 333 S.W.3d 572, 576-77 (Tenn. Ct. App. 2010) (internal citations omitted). In his Rule 59.04 motion, Mr. Eidson does not cite to any errors in the trial court's judgment; it simply asks the court to review its previous orders. The law is clear that Rule 59 is not available to reargue a matter.

With respect to the Rule 60 motion, only 28 days had elapsed between the date of entry of the order and the date the motion was filed; therefore, the judgment had not become final and the Rule 60.02 motions was not appropriate. *See Waste Management, Inc. of Tennessee v. South Central Bell Telephone Co.*, 15 S.W.3d 425, 429 (Tenn. Ct. App. 1997) ("A judgment adjudicating all the claims between all the parties becomes final thirty days after entry unless one of the parties files a Tenn. R. Civ. P. 59 motion.").

In addition, as noted earlier, Mr. Eidson admitted that the causes of action against the defendants other than Officer Hurt should be dismissed. It was not an abuse of discretion for the court to deny a motion in which he sought to reverse that to which he had previously agreed.

In light of our disposition of this case, it is necessary to address the denial of Mr. Eidson's motion to amend the complaint to substitute Nick Hurt in the place of Defendant JD1, which he filed on May 20, 2013; on July 19, along with the order dismissing the case, the court entered an order stating:

This cause came before the Court on Plaintiff's Motion to Amend his Complaint and the Court, after reviewing the record and hearing argument of counsel in open court, is of opinion that the Plaintiff's Motion is not well taken. Accordingly, it is so ORDERED that Plaintiff's Motion to Amend is DENIED.

The court did not base its grant of summary judgment to Officer Hurt on the ground that he was not specifically named in the suit and Defendant has not assigned error in that regard.

Tenn. R. Civ. P. 15.01 mandates that, in considering a motion to amend a pleading, "leave shall be granted when justice so requires." We see no reason for the denial of the motion to amend, particularly in light of the fact that Officer Hurt was represented by counsel throughout the proceedings and his unsworn statement and deposition were filed in support of the motion for summary judgment, setting forth in detail his interaction with Mr. Eidson on the night of the arrest. Accordingly, we reverse the denial of the motion to amend.

III. CONCLUSION

For the foregoing reasons, the judgment of the trial court granting summary judgment is vacated and the case is remanded for further proceedings. Nothing herein should be construed to prohibit Officer Hurt from renewing his summary judgment motion.

RICHARD H. DINKINS, JUDGE