IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 27, 2015 Session

TIMOTHY R. PARSONS v. WILSON COUNTY, TENNESSEE

Appeal from the Circuit Court for Wilson County
No. 2012CV736 John D. Wootten, Jr., Judge

No. M2014-00521-COA-R3-CV – Filed September 3, 2015

Inmate at Wilson County jail, who fell from top bunk bed and injured his shoulder, sued the County under the Governmental Tort Liability Act for failing to assign him to a bottom bunk or provide him with a ladder to access the top bunk. Following a trial, the court held that the bunk assignment was a discretionary function, and consequently, the County was immune from suit; that the county owed no duty to provide a bottom bunk, and that the inmate was more than 50 percent at fault for his injuries. We reverse the trial court's ruling that the County was immune and the court's consideration of comparative fault; determining that the County was not negligent, we affirm the judgment in favor of the County.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

RICHARD H. DINKINS, J., delivered the opinion of the court, in which ANDY D. BENNETT and W. NEAL MCBRAYER, JJ., joined.

David L. Cooper, Nashville, Tennessee, for the appellant, Timothy R. Parsons.

Jeffrey R. Thompson and N. Craig Strand, Knoxville, Tennessee, for the appellee, Wilson County, Tennessee.

OPINION

Timothy Parsons ("Plaintiff") was an inmate at the Wilson County jail from January 5 through February 19, 2012; this was his tenth time to be housed as an inmate in that facility. During the intake process on January 5, he was questioned by the intake officer and by medical staff relative to his medical history; in the course of the intake procedure, he requested a lower bunk bed, citing existing shoulder and neck injuries.

When he received his cell assignment, however, he was given a top bunk. On the morning of January 7, as he was attempting to get down from the top bunk, he fell and injured his shoulder. He reported the injury to correctional officers and was treated by medical staff at the jail and Dr. Roy Terry, an orthopedic surgeon, who ordered physical therapy.

Plaintiff filed suit pursuant to the Tennessee Governmental Tort Liability Act against Wilson County ("the County" or "Defendant") on December 17, 2012, making the following specific claims of negligence:

> 27. Defendant owed a duty of care to the Plaintiff, by and through the correctional officers and other employees of the Wilson County Sheriff's Department, and to provide Plaintiff with a safe environment while being housed as an inmate.
>
> 28. Defendant is guilty of the following acts of negligence:
>
> a) Failure to provide Plaintiff with a lower bunk while incarcerated at the Wilson County Sheriff's Department when Defendant knew or should have known that he needed a lower bunk based on his specific medical needs; and
>
> b) Failure to provide Plaintiff a ladder, or other similar device, to enter and exit the upper bunk in Cell 24 while housed at the Wilson County Sheriff's Department.[1]

Plaintiff sought $300,000 in compensatory damages. In its Answer, Defendant admitted it owed a limited duty of care and denied the allegations in paragraph 28; Defendant relied upon "all defenses contained in the Tennessee Governmental Tort Liability Act found at T.C.A. §29-20-101 et. seq.," and set forth no affirmative defenses.

A bench trial was held on January 24, 2014, at which three witnesses testified: Plaintiff, Lt. Doug Whitefield, who oversaw day-to-day management of the jail, and Dr. Roy Terry, who testified by deposition.

At the conclusion of the trial, the court orally ruled in the County's favor, which was incorporated into the court's final order, entered on February 28, 2014:

[1] Plaintiff did not pursue this claim at trial, and during his closing argument, Plaintiff's counsel stated: "We're not saying that they were negligent because they didn't put a ladder up there or another stool, because quite frankly, that is a safety issue. You put a ladder up there and all of a sudden an inmate takes a sheet and they can sit there and hang themselves." Lt. Doug Whitefield had testified on behalf of the County that it was the jail's policy to not provide ladders in the cells to prevent suicidal inmates from using the rungs to hang themselves.

> Wilson County, Tennessee is entitled to immunity under the Governmental Tort Liability Act because the county was performing a discretionary function in its method of assigning a bunk to Plaintiff and Defendant would be entitled to a dismissal on this ground alone.
>
> The Court finds that the county had no duty in this case to provide Plaintiff with a bottom bunk and therefore, Defendant would be entitled to a dismissal on this ground alone.
>
> The Court finds that there was no breach of duty to the Plaintiff and the Plaintiff has failed to carry his burden of proof on the breach of duty and therefore, Defendant would be entitled to a judgment on this ground alone.
>
> The Court finds that it was not foreseeable that the Plaintiff would jump from his bed to the table instead of using the more obvious way of exiting by using the lower bunk as a step and therefore, Defendant would be entitled to a judgment on this ground alone.
>
> The Court finds that Defendant's actions were not the cause in fact of the injury in this case and Defendant would be entitled to a judgment on this ground alone.
>
> The Court additionally finds that Plaintiff was guilty of more than fifty percent (50%) of the fault in this case and for that reason, Defendant is entitled to a judgment.

The Plaintiff appeals, contending that the County was not immune from suit under the facts presented, that the County was negligent, that the court erred in admitting into evidence a document titled "To be Cleared by Medical for Population," which showed that Plaintiff had been medically cleared without any restrictions, and that the court should not have considered the defense of comparative fault in its ruling.

As this was a bench trial, the case "is subject to our de novo review upon the record of the proceedings below. Tenn. R. App. P. 13(d) mandates that there is a presumption that the trial court's findings of fact are correct, and we must honor that presumption unless the evidence preponderates to the contrary." *Cannon v. Loudon Cnty*., 199 S.W.3d 239, 241 (Tenn. Ct. App. 2005) (citing *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993)). We afford no presumption as to the correctness of the trial court's conclusions of law. *Cannon*, 199 S.W.3d at 241 (citing *Campbell v. Florida Steel Corp*., 919 S.W.2d 26, 35 (Tenn. 1996)).

I. IMMUNITY

Plaintiff first contends that the trial court erred in ruling that discretionary function immunity applied; Plaintiff argues that: (1) "the decision of the intake officer [to assign a top bunk], who was told by Mr. Parsons that he needed a bottom bunk because of previous injuries, was an operational function that does not support immunity," and (2) that "the improper instruction from a correctional officer telling Mr. Parsons to 'jump' from a table to the top bunk (and visa [sic] versa) was a violation of jail procedure, clearly 'ministerial' in nature, and not subject to immunity under T.C.A. § 29-20-205(1)."

We first address whether the county is immune from suit pursuant to the discretionary function exception found in the Tennessee Governmental Tort Liability Act ("TGTLA"). Tenn. Code Ann. § 29–20–201 codifies the common law rule that "all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities." Exceptions to this immunity are set forth at Tenn. Code Ann. §§ 29-20-202 – 205. Tenn. Code Ann. § 29-20-205(1) provides:

> Immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment except if the injury arises out of:
>
> (1) the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused; ...

The TGTLA does not define the term "discretionary function," but our Supreme Court, in *Bowers v. City of Chattanooga*, 826 S.W.2d 427 (Tenn. 1992), adopted the planning-operational test to assist courts in analyzing whether the negligent act or omission of the governmental entity at issue in the case is a discretionary function. *Bowers*, 826 S.W.2d at 430-31. Under the planning-operational test, courts are to distinguish governmental acts that are performed at the "planning" level from those performed at the "operational" level:

> [D]ecisions that rise to the level of planning or policy-making are considered discretionary acts which do not give rise to tort liability, while decisions that are merely operational are not considered discretionary acts and, therefore, do not give rise to immunity.

Bowers, 826 S.W.2d at 430.

Lt. Whitefield testified that there was no written policy pertaining to the bunk assignment process but that a procedure was in place to determine which inmates received a bottom bunk due to the fact that "90 percent" of inmates say they "need a bottom bunk." He explained the procedure as follows: at the initial intake screening, forms are completed by the intake officer with the inmate's biographical and medical

information; these forms are sent to the medical unit, where nurses employed by Southern Health Partners[2] review the forms, meet with inmates, determine whether an inmate is able to be placed in the general population in the jail, and make the decision about whether or not the inmate's medical needs necessitate that the inmate be assigned a bottom bunk.

Based on Lt. Whitefield's description of the bunk assignment process, the role of the officers and the nurses in making the bunk assignments was to implement the existing procedure; thus, the decision to assign Mr. Parsons a top bunk was an operational one, not discretionary, and immunity was removed. *See Limbaugh* 59, S.W.3d at 85; *Moore v. Houston County Bd. of Educ.*, 358 S.W.3d 612, 618 (Tenn. Ct. App. 2011). On the basis of the record presented, Tenn. Code Ann. §29-20-205(1) did not provide immunity to the county.

With respect to Plaintiff's second argument, Plaintiff contends that he was following a guard's instruction to use the table in the cell to climb down from the top bunk when he fell and sustained his shoulder injury.[3] Plaintiff did not allege that this

[2] Southern Health Partners is the entity with which Wilson County contracted to provide medical services in the jail; it is not a party to this suit.

[3] The Plaintiff testified as follows:

> Q. All right, Mr. Parsons, did you have a conversation with the officer about how to get in and out of the top bunk?
> A. Yes, sir, I did.
> Q. And what did that officer say to you?
> A. He told me to step up on the stool and the table and jump into the bed.
> ***
> Q. Okay. And so did you have or do you recall any further conversation with the officer about that particular thing?
> A. No, sir.
> ***
> Q. Okay. I failed to ask you something about the day before, Mr. Parsons, if I could go back to it for just a minute. Was there another officer or guard that came by your cell on the evening of -- I guess it would be January 6th, before you went to bed and you talked to him about how to get in and out of the cell [sic]?
> A. Yes, sir.
> Q. All right. Is this a separate guard than the one that had brought you over to K24?
> A. No, that same guard.
> Q. Same guard?
> A. Yes, sir.
> Q. Okay. And did you have, again, another conversation with this guard about how you're supposed to get in and out of that cell or in and out of that bunk, excuse me?
> A. Yes sir.
> Q. And what did he tell you?
> [Objection raised by Defendant and overruled]
> A. To step out on to the stool, on to the table and jump from there to the bed.

instruction was a specific act of negligence in its Complaint, but asserted at trial and on appeal that the statement should remove immunity. Because of our holding that immunity was removed, we find it unnecessary to address this contention.

II. COMPARATIVE FAULT[4]

We now turn to Plaintiff's argument that "[s]ince Wilson County failed to allege comparative fault as an affirmative defense, it was error for the trial court, *sua sponte*, to use comparative fault as a separate ground for dismissal."

Tenn. R. Civ. P. 8 is a rule of pleading; Rule 8.03 is a "clearly-stated rule of procedure that is crucial to the equitable and efficient administration of a comparative fault system." *Dickson v. Kriger*, 374 S.W.3d 405, 413 (Tenn. Ct. App. 2012) (citing *George v. Alexander*, 931 S.W.2d 517, 522 (Tenn. 1996)). The rule requires that "[i]n pleading to a preceding pleading, a party shall set forth affirmatively facts in short and plain terms relied upon to constitute…comparative fault (including the identity or description of any other alleged tortfeasors)…." Tenn. R. Civ. P. 8.03. Comparative fault is an affirmative defense concerned primarily with "blame-shifting"; "once the defendant introduces evidence that another person's conduct fits this element [of causation in fact], it has effectively shifted the blame to that person." *George*, 931 S.W.2d at 521. Rule 8.03 permits this blame shifting, but it requires the party who desires to assert comparative fault to first make known the facts constituting such a defense as well as the identity of other persons alleged to be tortfeasors.[5]

Plaintiff's testimony is uncontroverted; the guard was never identified or called to testify. However, this testimony reveals that the guard's instructions were to use the table as a means to get into the bed, not a means to get out of it, which is the action Plaintiff was taking when he sustained his injury.

To provide context surrounding the circumstances of Plaintiff's injury, we note that, according to measurements of the furniture contained in the cell; the top bunk was 51 and 5/8 inches tall; the distance between the top bunk and the lower bunk was 31 and 1/8 inches; the distance from the top bunk to the table is 44 and ¾ inches. The Plaintiff testified that he was 5 foot, 5 inches (65 inches) tall.

[4] We use the term "comparative fault" broadly herein, referring to the set of principles which govern the analysis of liability in tort actions; the system of apportioning liability includes both potential tortfeasors as well a plaintiff whose own negligence may be a cause of his injury. *See Owens v. Truckstops of Am.*, 915 S.W.2d 420, 425 n.7 (Tenn. 1996) (stating that "[The term 'comparative negligence'] encompasses the system of determining the damages attributable to the plaintiff as well as against the defendants which the court adopted when it abandoned the 'outmoded and unjust common law doctrine of contributory negligence.'").

[5] The Advisory Commission Comment to the 1993 Amendment to Rule 8.03 highlighted the shift from contributory negligence to comparative fault following the decision in *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992). The comment states: "Note that the defendant must identify or describe other alleged tortfeasors who should share fault, or else the defendant normally would be barred from shifting blame to others at trial."

In *Dickson*, this Court held that a defendant who wishes to advance the argument that the plaintiff caused or contributed to his own injury "must first affirmatively plead comparative fault under Rule 8.03."[6] 374 S.W.3d at 413. The answer to the complaint must set forth facts alleging: "(1) the fault of the plaintiff, and (2) the fault of nonparties to the litigation. 'Fault' includes not only allegedly negligent or other tortious conduct that contributed to cause plaintiff's injury, death, or losses, but also any conduct that allegedly 'caused' plaintiff's injury, death, or losses." 17 John A. Day, et al., *Tennessee Practice: Tennessee Law of Comparative Fault* § 12:1 (2015). Allowing the consideration of such a defense without it having been pled would "invite evasion of a clearly-stated rule of procedure that is crucial to the equitable and efficient administration of a comparative fault system." *Dickson*, 374 S.W.3d at 413 (citing *George*, 931 S.W.2d at 522).

The answer filed by Wilson County does not plead an affirmative defense or allege facts which would constitute an avoidance of the County's liability, in whole or in part; as a consequence, Plaintiff was deprived of notice that his negligence was at issue and an opportunity to address the defense of comparative fault in the presentation of his case. Accordingly, we reverse the trial court's holding that at Plaintiff "was guilty of more than fifty percent (50%) of the fault in this case."

II. NEGLIGENCE

To prevail on a claim of negligence, the plaintiff must prove by a preponderance of the evidence the five essential elements of a claim of negligence: "(1) a duty of care owed by the defendant to the plaintiff; (2) conduct falling below the applicable standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate, or legal, cause." *King v. Anderson County*, 419 S.W.3d 232, 246 (Tenn. 2013); *see also Downs ex rel. Downs v. Bush*, 263 S.W.3d 812, 819 (Tenn. 2008).

"Whether the defendant owed the plaintiffs a duty of care is a question of law to be determined by the court." *West v. E. Tennessee Pioneer Oil Co*., 172 S.W.3d 545, 550 (Tenn. 2005) (citing *Burroughs v. Magee*, 118 S.W.3d 323, 327 (Tenn.2003); *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89; *Coln v. City of Savannah*, 966 S.W.2d 34, 39 (Tenn. 1998). In Tennessee, "jail officials, while not insurers of their prisoners' safety, have a duty to exercise ordinary and reasonable care to protect the life and health of the persons in their custody." *Cannon v. Loudon Cnty*., 199 S.W.3d 239, 242 (Tenn. Ct. App.

[6] *Dickson* was a medical negligence action in which the defendant was an eye doctor who had been sued for causing a condition known as "decentered ablation" as a result of laser surgery performed on the plaintiff. Plaintiff filed a motion *in limine* to preclude the admission of expert testimony that plaintiff caused his injury by failing to maintain focus on a blinking red light during the surgery; the trial court denied the motion. On interlocutory appeal, this Court, citing Rule 8.03, held that the defendant must affirmatively plead comparative fault and reversed the trial court's denial of the motion *in limine*. *Dickson*, 374 S.W.3d at 412-13.

2005) (citing *Cockrum v. State*, 843 S.W.2d 433, 436 (Tenn.Ct.App.1992)). Jail officials' conduct "must only be reasonably commensurate with the inmate's known condition." *Payne v. Tipton Cnty*., 448 S.W.3d 891, 899 (Tenn. Ct. App. 2014) (citing *Cockrum*, 843 S.W.2d at 438). "Except in the most obvious cases, whether the prison officials acted reasonably to protect a prisoner's safety requires expert proof or other supporting evidence."[7] *Id.*

Plaintiff testified that he told both the intake officer and a nurse that he needed a lower bunk because he "didn't think [he] could deal with a top one" and that "it would be difficult to get in to the top bunk." He was questioned about a "Medical Staff Receiving Screening Form" completed by the nurse who interviewed him during the intake process that was admitted into evidence as Exhibit 1. He testified that, though the nursing staff's form conveyed that he had been in motorcycle wreck in June 2011 that broke his left shoulder and separated his right shoulder, the accident actually involved an ATV and caused one shoulder to be dislocated and the other to be separated; neither was broken. The "Inmate Medical Form" completed by the intake officer and admitted into evidence as Exhibit 9 contains the following information: "Subject states that he has two broke shoulders and neck." When questioned about what he told the intake officer, Plaintiff clarified that he had neck surgery in 1990 for a ruptured disk and that he "two shoulder injuries, one on each shoulder" from the ATV wreck. There is nothing contained in these forms to indicate any special treatment or accommodations necessitated by his medical history. Furthermore, the medical proof Plaintiff put forth, the deposition of Dr. Terry, did not show that the assignment of a bottom bed was medically necessary at the time of his incarceration.

As discussed *supra*, the County had a procedure in place to determine whether a lower bunk was medically necessary, since most inmates ask for a bottom bunk. We have reviewed the testimony presented at trial and the documents on which Plaintiff relied; the record before us does not preponderate against the trial court's observation that no medical necessity existed for Plaintiff to be assigned a bottom bunk bed or its holding that no duty to provide a bottom bunk was owed.[8] Plaintiff recounted his past injuries to the intake officer and the nurse; no ongoing medical condition was reported during intake that required treatment while incarcerated. On the basis of what was known about Plaintiff's prior medical history, the evidence shows that the County exercised ordinary and reasonable care with respect to the Plaintiff by following the bunk assignment

[7] This Court has noted that "[t]he state has the duty to make available to inmates a level of medical care which is reasonably designed to meet their routine and emergency health care needs, and states must provide medical care for inmates' physical ills, dental care, and psychological or psychiatric care." *Payne v. Tipton Cnty*., 448 S.W.3d at 899 (citing 60 Am.Jur.2d Penal and Correctional Etc. § 99).

[8] The trial court observed that "the plaintiff testified that he told her [a nurse] and then he wasn't given a bottom bunk. Well, inferentially and circumstantially I could draw from that that the nurse decided that that was not medically necessary and hence, she cleared him for a top bunk."

procedure and determining that Plaintiff had no existing medical condition that necessitated a bottom bunk assignment. Indeed, he testified that he was able to successfully get into the top bunk.[9] The Defendant did not owe the duty alleged by Plaintiff, and the evidence supports a conclusion that the County did not breach its duty to Plaintiff. We affirm the judgment of the trial court on this ground; it is not necessary to address the remaining elements of negligence.

III. THE COURT'S ADMISSION OF EXHIBIT 15

Decisions regarding the admission or exclusion of evidence are entrusted to the trial court's discretion and will not be disturbed on appeal unless the trial court abused its discretion. *State v. Banks*, 271 S.W.3d 90, 116 (Tenn. 2008) (citing *State v. Robinson*, 146 S.W.3d 469, 490 (Tenn. 2004); *State v. James*, 81 S.W.3d 751, 760 (Tenn. 2002). An abuse of discretion occurs when the court applies incorrect legal standards, reaches an illogical conclusion, or employs reasoning that causes an injustice to the complaining party. *Banks*, 271 S.W.3d at 116 (citing *Konvalinka v. Chattanooga–Hamilton County Hosp. Auth.*, 249 S.W.3d 346, 358 (Tenn. 2008)). When we review the trial court's exercise of discretion, we presume that the court's decision is correct and review the evidence in a light most favorable to upholding the decision. *Lovlace v. Copley*, 418 S.W.3d 1, 16-17 (Tenn. 2013) (citing *Gonsewski v. Gonsewski*, 350 S.W.3d 99, 105 (Tenn. 2011)). As noted in *White v. Vanderbilt U.*, 21 S.W.3d 215 (Tenn. App. 1999):

> Appellate courts will set aside a discretionary decision only when the trial court has misconstrued or misapplied the controlling legal principles or has

[9] Plaintiff testified on cross examination as follows:

> Q. Okay. Now, the first night that you were in the jail, you were placed in the bottom bunk, correct?
> A. Yes, sir.
> Q. And then the second day you were moved to the top bunk, correct? You were moved to the cell in K24 where you were assigned to the top bunk, correct?
> A. Yes, sir.
> Q. And when you were placed in that pod, initially you were able to successfully get into the bed, right?
> A. Yes, sir.
> Q. Okay. And then you said it was -- when you were injured was actually when you got out of the bed, right?
> A. Yes, sir.
> Q. Okay. And the way that you -- and you said the way you got into the bunk was by stepping on the stool, then on to the table, then jumping into the bed, right?
> A. Yes, sir.
> Q. And then the way you said you hurt yourself was by getting out and reaching for the table with your foot and then you slipped off the table and came down like that, correct?
> A. Yes.

> acted inconsistently with the substantial weight of the evidence. Thus, a trial court's discretionary decision should be reviewed to determine: (1) whether the factual basis for the decision is supported by the evidence, (2) whether the trial court identified and applied the applicable legal principles, and (3) whether the trial court's decision is within the range of acceptable alternatives.

White, 21 S.W.3d at 223 (internal citations omitted).

At issue in this case is the court's admission, over Plaintiff's objection on the grounds of hearsay and lack of foundation, of a form document titled "To Be Cleared By Medical For Population," that Defendant offered to show that Plaintiff was medically cleared to enter the general population of the jail and did not require a bottom bunk bed. The trial court found that a proper predicate had been laid and admitted the document pursuant to the hearsay exception found at Tenn. R. Evid. 803(6).[10]

Although Plaintiff claims "there was no testimony offered about who or under what circumstances the document was prepared," the record indicates otherwise. Lt. Whitefield testified that he was the Administrative Lieutenant over the jail and responsible for "the day-to-day management or operation of the facility." He identified the document as the list that is "filled out by a third-shift corrections officer with all the [inmates'] names, intake date and location" and which is then sent to the medical unit where the Southern Hills Partners staff medically clears inmates to enter the general population of the jail. He testified that every inmate that comes through the jail goes through that procedure and that the form, dated January 5, 2012, stateing that Plaintiff

[10] Tenn. R. Evid. 803(6) reads as follows:

> (6) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses made at or near the time by or from information transmitted by a person with knowledge and a business duty to record or transmit if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness or by certification that complies with Rule 902(11) or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, profession, occupation, and calling of every kind, whether or not conducted for profit.

Plaintiff also takes issue with the trial court's ruling that the document "may fit under the public records exception" found in Tenn. R. Evid. 803(8). Because the testimony presented is sufficient to establish a foundation for admission of the record pursuant to Tenn. R. Evid. 803(6), it is not necessary to address whether admission would have also been proper under Rule 803(8).

was medically cleared, was a form kept in the ordinary course of business of the Wilson County jail, maintained within the jail's records.[11]

Lt. Whitefield was a "qualified witness," within the meaning of Rule 803(6), who possessed the requisite knowledge to establish that the record in question was made at or near the time of the events it recorded from the knowledge of those who worked within the jail and had a duty to record the information. He was also competent to testify that the creation of this type of record was the regular practice of the Wilson County jail. As held by the court, this testimony satisfied the requirements for admission under Tenn. R. Evid. 803(6); the court properly identified and applied the requirements of that Rule to the facts presented, and did not abuse its discretion in admitting this record pursuant to the hearsay exception found in Rule 803(6).

[11] In order to lay the proper predicate to admit this form, Lt. Whitefield testified as follows:

> Q. Lieutenant Whitefield, can you please identify the document that's just been handed to you.
> A. This is a cleared list that we give to medical to get inmates cleared for population.
> Q. And what do you mean "cleared for population"?
> A. Medically cleared.
> Q. Does every single inmate that comes through the jail go through that procedure?
> A. Yes.
> Q. And what's the – what's the date on this particular form?
> A. January 5th, 2012.
> ***
> Q. Lieutenant Whitefield, the form that's been laid in front of you, is that a form that's kept in the ordinary course of business of the Wilson County jail?
> A. Yes.
> ***
> Q. And once it's created from the blank form, what happens to it?
> A. It's filled out by a third-shift corrections officer and all the names, intake, date and location is then sent to medical -- sent to Southern Hills Partners.
> Q. And then what happens once it comes back from Southern Hills Partners?
> A. If they have put -- if they've put "cleared" or -- we move them according to this, whether they've been cleared or not or certain restrictions.
> Q. So does this sheet control the -- to some extent, the placement of the inmate by Wilson County?
> A. Yes.
> Q. And did you pull this particular document from the records of the Wilson County Jail?
> A. Yes.

IV. CONCLUSION

Based on the foregoing, we reverse the trial court's holdings relative to discretionary function immunity and comparative fault; we affirm the judgment of the court.

_____

RICHARD H. DINKINS, JUDGE