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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs March 1, 2023

BETTY H.¹ v. WILLIAMSON COUNTY ET AL.

Appeal from the Circuit Court for Williamson County
No. 2014-588 J. Russell Parkes, Judge

No. M2022-00300-COA-R3-CV

The mother of a minor filed suit against a county and county employees, alleging that the minor was sexually assaulted by a county employee while in custody at a county-run juvenile detention center. The trial court granted the county's motion for summary judgment on several grounds, including that the county retained immunity under the Governmental Tort Liability Act because the claims against the county arose out of civil rights claims. Finding no error, we affirm the judgment of the trial court.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which ANDY D. BENNETT, J., and J. STEVEN STAFFORD, P.J., W.S., joined.

Bryant Kroll and W. Gary Blackburn, Nashville, Tennessee, for the appellant, Betty H.

Lisa M. Carson, Franklin, Tennessee, for the appellee, Williamson County, Tennessee.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

In December of 2014, Betty H. ("Plaintiff"), as next friend of her minor child (the "Minor"), sued Williamson County (the "County"); County employees Juan Cruz, Betsy Adgent, and Steve McMahan; and Williamson County Juvenile Court Judge Sharon

¹ In actions involving juveniles, it is this Court's policy to protect the privacy of children by using only the first name and last initial, or only the initials, of the parties involved.

Guffee, in the Williamson County Circuit Court (the “trial court”).² Plaintiff alleged that Cruz, who was employed as a detention monitor at the County’s juvenile detention center (“the Center”), sexually assaulted the Minor on December 7, 2013, while the Minor was detained at the Center. Specifically, the complaint described two brief, but separate, incidents of Cruz sexually assaulting the Minor. The first one allegedly occurred in the intake area closet of the Center after Cruz ordered the Minor to organize a bookshelf therein and while another County employee, intake officer Jodi Stinson, sat a few feet away at a desk in the intake area. The second incident allegedly took place minutes later also in the intake area after Stinson momentarily left the intake area to escort a visitor into the Center.

Based on these allegations, Plaintiff asserted multiple claims against the County, including vicarious liability for Cruz’s “intentional tort of assault and battery” perpetrated upon the Minor; negligent hiring, training, and supervision of Cruz; and negligence per se for failure to comply with the guidelines set forth in the federal Prison Rape Elimination Act of 2003 (“PREA”) and with the minimum standards for local correctional facilities developed by the Tennessee Corrections Institute (“TCI”).³ A few days later, Plaintiff sued the same defendants in the United States District Court for the Middle District of Tennessee (the “federal court”) pursuant to 42 U.S.C. § 1983, asserting that the Minor’s constitutional rights were violated as a result of alleged negligent hiring, training, retention, and supervision of Cruz and alleged violations of PREA regulations and TCI minimum standards.⁴

Meanwhile, the Williamson County District Attorney General instituted a criminal action against Cruz based on the same acts alleged in Plaintiff’s complaint. The County and the County employees moved, with the support of the District Attorney General’s Office, to stay the proceedings in Plaintiff’s civil action pending resolution of the criminal case against Cruz. The trial court granted the motion. On February 17, 2016, counsel for the County and the County employees notified the trial court that the criminal proceeding against Cruz had concluded with Cruz being acquitted of all charges. The trial court subsequently entered an expungement order concerning Cruz’s criminal record.

In April of 2016, the County employees moved to dismiss the civil action for failure to state a claim upon which relief can be granted, arguing (1) that a claim for negligent

² Defendant McMahon was a supervisor of the Center, and Defendant Adgent was director of juvenile services for the Williamson County Juvenile Court.

³ In addition, Plaintiff asserted claims for negligent hiring, training, supervision, and retention against the County employees, alleging that the Center “is managed on a day-to-day basis jointly” by them. Plaintiff also asserted a claim against Cruz for assault and battery. None of these claims are at issue in this appeal.

⁴ It appears from the record that all defendants in the federal action, except Cruz, were dismissed from the action by respective summary judgments entered in 2017 and 2018.

hiring, training, supervision, and retention can only be brought against their employer and (2) that as governmental employees, they are immune from suit under Tennessee Code Annotated section 29-20-310(b).⁵ In response to the motion, Plaintiff voluntarily dismissed the action as to the County employees, and the trial court dismissed them from the action in June of 2016.

The case against Cruz and the County proceeded to pretrial litigation, including extensive discovery motions and countermotions concerning Cruz's record in the criminal case, the file of the Minor maintained by the Department of Children's Services, the scope of testimony of various witnesses, and even sanctions against Plaintiff's counsel for knowingly disseminating information subject to a protective order.

In June of 2018, the County moved for summary judgment, asserting that there is no genuine issue of material fact concerning the following: (1) that it is immune from suit under the Tennessee Governmental Tort Liability Act ("GTLA") for all claims advanced by Plaintiff; (2) that it cannot be held vicariously liable for the alleged actions of Cruz, as the GTLA does not remove immunity for intentional acts of employees or for actions outside the scope of their employment; (3) that Plaintiff cannot rely upon PREA or TCI regulations to establish liability, as neither body of regulations carry any statutory authority to impose duties upon or prohibit conduct by the County; and (4) that with respect to Plaintiff's claims premised upon alleged negligence in the hiring, training, supervision, and retention of Cruz, Plaintiff cannot establish that the alleged assault was or should have been reasonably foreseeable to the County. In support of the motion, the County submitted various affidavits and excerpts from deposition testimony and from the trial transcript of Cruz's criminal case. Plaintiff filed a response addressing each of the issues raised by the County. The County submitted a reply asserting that it has discretionary function immunity "as to claims that it was negligent in failing to adopt policies and training for prevention of sexual abuse" and as to Plaintiff's negligent hiring claim. The trial court heard the motion in November of 2018.

On February 7, 2022, the trial court entered a detailed order granting the County's motion for summary judgment. At the outset, the order noted:

The parties have each submitted excellent Briefs relative to the Defendant, Williamson County's Motion for Summary Judgment[,], citing some fifty-one (51) Statements of Undisputed Material Facts submitted by Defendant, over one hundred (100) Undisputed Material Facts submitted by the Plaintiff, seven (7) depositions, multiple citations to the criminal trial

⁵ "No claim may be brought against an employee or judgment entered against an employee for damages for which the immunity of the governmental entity is removed by this chapter unless the claim is one for health care liability brought against a health care practitioner." Tenn. Code Ann. § 29-20-310(b).

transcript, cites to a litany of federal and state Court cases, discovery responses, and affidavits of witnesses.

The trial court then addressed in turn each issue raised in the County's motion. As to immunity under the GTLA, the trial court concluded that "based on the Statement of Undisputed Material Facts that the Plaintiff's negligence claims arise out of the circumstances giving rise to the civil rights claims brought in the United States District Court and thus Williamson County retains immunity pursuant to subsection (2) of Tenn. Code Ann., Section 29-20-205." Next, concerning vicarious liability for Cruz's actions, the trial court found that "the alleged sexual assaults perpetrated by Cruz are not within the scope of the employment of a government employee and there is no material fact to dispute relative to same, thus the Court grants the Defendant, Williamson County's Motion for Summary Judgment relative to any claim of vicarious liability." Third, with respect to negligence per se pursuant to alleged noncompliance with PREA and TCI regulations, the trial court stated that Plaintiff failed to rebut the County's defense that "PREA and the regulations associated therewith are not mandatory for local facilities and thus it cannot be held to bind Williamson County under a negligence per se theory." Similarly, "[t]he Court f[ound] that the [County's] claim that the TCI minimum standards and/or regulations had no statutory authority over juvenile detention centers in December 2013 and consequently may not be relied upon to establish a finding of negligence per se is in fact accurate" Last, as to the claim of alleged negligence in the hiring, training, supervision, and retention of Cruz, the trial court found,

after a review of all of the statements of Undisputed Material Facts and the record as a whole[,] that there is nothing in this record that would place Williamson County or any of the originally named Defendants on notice of information that would lead them to suspect any form of future sexual assault. In fact, the record demonstrates that prior to the incident in question Cruz had no criminal record, no criminal past, nor is there any evidence that the incident in question was foreseeable or that any part of the hiring process caused the Plaintiff injury. In fact, the Statement of Undisputed Material Facts and statements attributable to the Plaintiff, [the Minor], demonstrate that prior to the incident in question Cruz had never behaved inappropriately toward him, [the Minor] had never reported any form of misconduct by Cruz or by any other detention staff and that prior to the day in question Cruz had never engaged in inappropriate conduct with regard to the Plaintiff.

Accordingly, the trial court granted summary judgment in favor of the County on all issues. Plaintiff timely appealed.

ISSUES PRESENTED ON APPEAL

Plaintiff's brief does not contain a statement of the issues presented for review, as required by the Tennessee Rules of Appellate Procedure. *See* Tenn. R. App. P. 27(a)(4). While Plaintiff's brief is deficient, "[w]e have no difficulty understanding what [Plaintiff] is arguing, whether convincingly or not, or what part of the record [s]he is referring to." *Boesch v. Holeman*, 621 S.W.3d 60, 70 (Tenn. Ct. App. 2020).⁶ Upon review of the argument section of Plaintiff's brief, we have determined that she proffers the following issues for consideration. All other issues Plaintiff purported to raise are waived.

1. Whether the trial court erred in dismissing Plaintiff's claims against the County pursuant to the GTLA without addressing the negligence of County employee Stinson and the County's affirmative duty to provide for the protection and care of the Minor under the special relationship doctrine.
2. Whether the trial court erred in determining that Plaintiff's negligent hiring, training, supervision, and retention claim could not be sustained because Cruz's actions were not foreseeable to the County.

In its posture as appellee, the County raises the following additional issues:

3. Whether Plaintiff's negligence claims are barred by the civil rights exception to the removal of governmental immunity.
4. Whether the County is entitled to discretionary function immunity with respect to Plaintiff's claim that the County was negligent in failing to adopt policies and training for the prevention of sexual abuse.

STANDARD OF REVIEW

The trial court disposed of this matter by summary judgment. A trial court may grant summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. The propriety of a trial court's summary judgment decision

⁶ We admonish Plaintiff's counsel, however, that noncompliance with the basic requirements of Rule 27 generally constitutes grounds to waive issues on appeal. *In re Marcell W.*, No. W2014-02004-COA-R3-PT, 2015 WL 4484303, at *5 (Tenn. Ct. App. July 23, 2015) ("Mother's brief waives any issue regarding the trial court's best interests analysis on account of her failure to comply with Rules 27(a)(4) and 27(a)(7) of the Tennessee Rules of Appellate Procedure . . ."); *see also Bean v. Bean*, 40 S.W.3d 52, 55 (Tenn. Ct. App. 2000) ("Plaintiff's failure to comply with the Rules of Appellate Procedure and the rules of this Court waives the issues for review.").

presents a question of law, which we review de novo with no presumption of correctness. *Kershaw v. Levy*, 583 S.W.3d 544, 547 (Tenn. 2019).

“The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.” *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). As our Supreme Court has instructed,

when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party’s claim or (2) by demonstrating that the nonmoving party’s evidence *at the summary judgment stage* is insufficient to establish the nonmoving party’s claim or defense.

Rye v. Women’s Care Ctr. of Memphis, 477 S.W.3d 235, 264 (Tenn. 2015). “[I]f the moving party bears the burden of proof on the challenged claim at trial, that party must produce at the summary judgment stage evidence that, if uncontroverted at trial, would entitle it to a directed verdict.” *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986)).

When a party files and properly supports a motion for summary judgment as provided in Rule 56, “to survive summary judgment, the nonmoving party may not rest upon the mere allegations or denials of its pleading, but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, set forth specific facts . . . showing that there is a genuine issue for trial.” *Rye*, 477 S.W.3d at 265 (internal quotation marks and brackets in original omitted). “Whether the nonmoving party is a plaintiff or a defendant—and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense—at the summary judgment stage, “[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.” *TWB Architects*, 578 S.W.3d at 889 (quoting *Rye*, 477 S.W.3d at 265).

ANALYSIS

We start by addressing, as a threshold issue, whether the County retains immunity under the GTLA with respect to the claims asserted by Plaintiff. The core of Plaintiff’s appeal is—as presented in her brief—that the trial court erred in granting summary judgment in favor of the County because the trial court did not address Stinson’s alleged negligent supervision of Cruz. But the County retorts that even so, the GTLA’s “civil rights” exception, found at Tennessee Code Annotated section 29-20-205(2), preserves its immunity.

Relevant to this case, the GTLA 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:**

....

(2) False imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of right of privacy, or **civil rights**[.]

Tenn. Code Ann. § 29-20-205(2) (2012) (emphases added). Put succinctly, when a plaintiff asserts a claim against a governmental entity for injuries caused by alleged negligent acts or omissions of the entity's employee, the entity retains immunity from suit if the injuries arise out of "civil rights." *Id.*

This Court has repeatedly construed the term "civil rights," as used in section 29-20-205(2), to include "claims arising under the federal civil rights law and the U.S. Constitution." *Nichols v. Metro. Nashville Airport Auth.*, No. M2020-00593-COA-R3-CV, 2021 WL 1426992, at *2 (Tenn. Ct. App. Apr. 15, 2021) (quoting *Cochran v. Town of Jonesborough*, 586 S.W.3d 909, 919 (Tenn. Ct. App. 2019)); *see also Merolla v. Wilson Cnty.*, No. M2018-00919-COA-R3-CV, 2019 WL 1934829, at *5 (Tenn. Ct. App. May 1, 2019); *accord Campbell v. Anderson Cnty.*, 695 F. Supp. 2d 764, 778 (E.D. Tenn. 2010) ("This court construes the term 'civil rights' in § 29-20-205(2) as meaning and including claims arising under the federal civil rights laws, e.g., 42 U.S.C. § 1983 and the United States Constitution."); *Bettis v. Pearson*, No. 1:04-CV-112, 2007 WL 2426404, at *11 (E.D. Tenn. Aug. 21, 2007) ("This Court construes 'civil rights' under section 29-20-205 as including claims arising under the federal civil rights laws and the U.S. Constitution." (citing *Hale v. Randolph*, No. 1:02-cv-334, 2004 WL 1854179, at *17 (E.D. Tenn. Jan. 30, 2004); *Brooks v. Sevier Cnty.*, 279 F. Supp. 2d 954, 960 (E.D. Tenn. 2003))). Further, our jurisprudence holds that where the acts a plaintiff alleges to be negligent are "predicated on intentional tortious conduct involving the violation of [the plaintiff's] civil rights" by government employees, the "civil rights exception" in Tenn. Code Ann. § 29-20-205(2) applies. *Jackson v. Thomas*, No. M2010-01242-COA-R3-CV, 2011 WL 1049804, at *7 (Tenn. Ct. App. Mar. 23, 2011) (citing *Campbell*, 695 F. Supp. 2d at 778); *see also Cochran v. Town of Jonesborough*, 586 S.W.3d 909, 914 (Tenn. Ct. App. 2019). In our view, then, the dispositive issue here is whether the gravamen of Plaintiff's claim of negligent supervision falls within the ambit of claims arising under federal civil rights law and the United States Constitution. If so, the County retains immunity under the civil rights exception, and Plaintiff's claim is barred.

This Court has recently discussed the applicability of the GTLA’s civil rights exception to claims of negligent supervision by government employees. *See, e.g., Nichols*, 2021 WL 1426992; *Merolla*, 2019 WL 1934829; *Cochran*, 586 S.W.3d at 914. In *Cochran*, for example, after being arrested, the plaintiff sued the Town of Jonesborough, alleging he was injured during the handcuffing process and asserting that “the town was negligent in its supervision and training of the arresting officer.” 586 S.W.3d at 911. The trial court dismissed the case, ruling that the town remained immune under the GTLA because the plaintiff’s “negligence claim arose out of the alleged violations of Plaintiff’s civil rights.” *Id.* After reviewing this Court’s jurisprudence “addressing the civil rights exception,” we affirmed the dismissal of the case, determining that the direct claims against the town for negligent supervision and training “result from [the plaintiff’s] allegation that the excessive handcuffing was the result of [the town’s] failure to properly train and supervise [the arresting officer]” and “sound squarely in civil rights.” *Id.* at 915, 919. Similarly, in *Merolla*, the plaintiff sued Wilson County alleging she suffered physical and emotional injuries stemming from mistreatment while incarcerated in the county jail. 2019 WL 1934829, at *1. We affirmed the trial court’s dismissal of that case, concluding that “‘the substantial point’ of [the plaintiff’s] claim . . . involves violations of civil rights, regardless of [her] insistence that the conduct was merely negligent.” *Id.* at *5 (citing Tenn. Code Ann. § 29-20-205; *Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73, 84 (Tenn. 2001)). Further, we explained that “under the GTLA[,] any ambiguity as to whether immunity exists must be resolved in favor of retaining immunity.” *Id.* at *6. In the same vein and more recently, in *Nichols*, we affirmed the trial court’s determination that a plaintiff’s allegations “that airport officers injured him by using an ‘arm bar restraint’ during an arrest” “sound squarely in civil rights and are barred by § 29-20-205(2).” 2021 WL 1426992, at *1. We reasoned that because “[t]he gravamen of Plaintiff’s claim is that the officers used excessive force, i.e., failed to use reasonable force, given the circumstances,” the negligent supervision and training claim against the airport “officers is ‘inextricably linked to a civil rights claim,’ and the civil rights exception in § 29-20-205(2) applies.” *Id.* at *5 (quoting *Cochran*, 586 S.W.3d at 918). This trilogy of cases bears out a guiding principle for our inquiry: a plaintiff’s claims premised on negligent conduct—such as a negligent supervision and training claim—may, under certain circumstances, arise out of civil rights, “even though tortious conduct must meet higher standards of fault than negligence in order to constitute civil rights violations.” *Id.* at *2.

As it pertains to this appeal, Plaintiff’s complaint asserts two relevant causes of action against the County:⁷

⁷ As noted, Plaintiff also asserted claims for negligence per se for alleged violations of PREA and minimum standards established by TCI. Plaintiff did not properly raise any issues concerning these claims on appeal and, consequently, they are waived.

12. The plaintiff brings this cause of action against **Williamson County** for the intentional tort of assault and battery committed upon him by Juan Cruz, an employee of Williamson County.
13. The plaintiff brings this cause of action against **Williamson County** for the negligent hiring, training, and supervision of Juan Cruz which was the direct and proximate cause of the injury to the plaintiff.

In our view, the “substantial point” of Plaintiff’s claim against the County for vicarious liability based on Cruz’s alleged intentional assault and battery of the Minor falls, as in *Merolla*, “within the ambit of ‘civil rights.’” 2019 WL 1934829, at *5. The claim is thus barred.

Plaintiff’s direct claim against the County for negligent supervision and training of Cruz fares no different—notwithstanding being couched in terms of negligence. Indeed, Plaintiff’s claim is analogous to those brought in both *Cochran* and *Nichols*. In those cases, we concluded that negligent supervision and training claims brought on the basis of alleged misconduct by government employees in handcuffing and restraining the respective plaintiffs “sound squarely in civil rights.” *Cochran*, 586 S.W.3d at 919; *Nichols*, 2021 WL 1426992, at *1. Likewise, here, the gravamen, that is, “[t]he substantial point or essence,” *Black’s Law Dictionary* (11th ed. 2019), of Plaintiff’s claim is the underlying alleged assault and battery of the Minor by Cruz while the Minor was in government custody. This claim sounds squarely in civil rights. Consistent with the rationale of our decisions in *Cochran*, *Merolla*, and *Nichols*, we hold that the County retains immunity pursuant to the GTLA’s civil rights exception. Tenn. Code Ann. § 29-20-205(2). Plaintiff’s negligent supervision claim is barred.

Plaintiff argues on appeal, however, that the trial court erred in failing to consider the alleged negligent supervision of Cruz by fellow County employee Stinson. This argument lacks merit for multiple reasons. For starters, Plaintiff’s complaint does not assert a cause of action against the County for negligent supervision specific to Stinson’s acts or omissions. As noted, paragraph 13 of the complaint asserts a claim against the County “for the negligent hiring, training, and supervision **of Juan Cruz.**” (Emphasis added). Although Plaintiff now attempts to rely on alleged negligence by Stinson, Plaintiff did not include Stinson as a defendant in the lawsuit. Second, any alleged negligent supervision of Cruz by Stinson is subsumed under Plaintiff’s broader negligent supervision claim against the County, inasmuch as the County, as an entity, can only supervise its personnel through its agents. Ultimately, whether the supervision claim is couched in general terms or, more specifically, in terms of Stinson’s supervision of Cruz, amounts to a distinction without a difference. The gravamen of Plaintiff’s claim remains the same: Cruz’s alleged assault of the Minor at the County’s detention center, which we have already

determined sounds in a civil rights claim.⁸ The trial court did not err in rendering summary judgment without explicitly addressing any alleged negligent supervision by Stinson.

Having determined that the GTLA's civil rights exception preserves the County's immunity against the claims brought by Plaintiff, all other issues raised by the parties are pretermitted.

CONCLUSION

The judgment of the Circuit Court for Williamson County is affirmed, and this case is remanded for proceedings consistent with this opinion. Costs of this appeal are taxed to the appellant, Betty H., for which execution may issue if necessary.

KRISTI M. DAVIS, JUDGE

⁸ Unsurprisingly, the complaint filed by Plaintiff in federal court alleging violations of the Minor's constitutional rights describes the same factual basis stated in the complaint filed in the trial court:

9. The plaintiff brings this cause of action against the defendants in their individual and official capacities under the authority of 42 USC § 1983 for the violation of the Eighth and Fourteenth Amendments.

....

12. The plaintiff brings this cause of action against Williamson County for their deliberate indifference in the supervision and training of juvenile detention personnel which is the moving force behind the constitutional violations perpetrated on the plaintiff/juvenile.

13. Failure to train results in a deliberate indifference by a government entity where it can be shown that there is a failure to train officials in a specific area where there is an obvious need for training in order to avoid violations of a citizen's constitutional rights. . . .

....

48. Cruz directed [the Minor] into the closet of the intake room while Jodi was sitting a[t] a desk less than six feet away. Cruz sexually assaulted [the Minor].

....

50. Jodi left the detention center again. When she did, Cruz approached [the Minor] sexually again, this time in the intake area. . . .