IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 9, 2006 Session

CARLTON B. PARKS v. STATE OF TENNESSEE, ET AL.

Appeal from the Circuit Court for Hamilton County
No. 05C504 John B. Hagler, Jr., Judge

No. E2005-02790-COA-R3-CV - FILED FEBRUARY 20, 2007

The issue we address in this appeal is whether the trial court erred in granting the Defendants' motions to dismiss the Plaintiff's complaint, on grounds that the statute of limitations had run and that the Defendants were immune from liability under the doctrines of sovereign immunity, judicial immunity, and prosecutorial immunity. We hold that the trial court correctly found that the complaint was time-barred by the applicable statute of limitations, and that under the facts presented, the Defendants were entitled to absolute immunity from suit. We therefore affirm the judgment of the trial court.

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

SHARON G. LEE, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and D. MICHAEL SWINEY, JJ., joined.

Carlton B. Parks, Chattanooga, Tennessee, *pro se* Appellant.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; and Mary M. Bers, Senior Counsel, for the Appellees, State of Tennessee, Douglas A. Meyer, William H. Cox, III, and David W. Denny.

OPINION

I. Background

This action is the fifth lawsuit brought by Carlton B. Parks arising from the events occurring in 1998 and 1999 pertaining to the charge of rape against him, the subsequent dismissal of the rape charge, and the loss of his employment as a Chattanooga police officer. As this court noted in our disposition of Mr. Parks' third lawsuit, *Parks v. City of Chattanooga*, No. E2006-00617-COA-R3-CV, 2007 WL 27122, at *1 (Tenn. Ct. App. E.S., Jan. 4, 2007) ("*Parks* I"),"[t]here is a long history of litigation initiated by the Plaintiff against the City of Chattanooga and various other defendants."

For the factual and procedural background as pertinent to the present action, we reiterate our findings in *Parks* I in relevant part:

> The plaintiff began working as a police officer for the City of Chattanooga ("the City") in 1987...
>
> Ms. Lashundra Brown is a resident of Chattanooga. Ms. Brown claimed she was raped by the plaintiff on January 21, 1998. As a result of the rape allegation, two investigations were commenced. An investigation was commenced by Captain Steve Parks and Sergeant Jackie Williams with the police department's Internal Affairs Division. Another investigation was conducted by Inspector James T. "Tim" Carroll and Sergeant Rodney Bowman with the police department's Major Crimes Division...
>
> Captain Parks completed the Internal Affairs investigation, which ultimately concluded that the charges against the plaintiff were substantiated. On March 10, 1998, a disciplinary hearing was held at which the plaintiff and his attorney were present. All of the members of the hearing committee agreed the plaintiff's employment with the City should be terminated. Chief Dotson made the final decision to terminate his employment effective March 13, 1998.
>
> With regard to the parallel investigation into potential criminal charges being brought against the plaintiff, Inspector Carroll met with the district attorney's office and it was agreed that there was sufficient evidence to present the charges to a grand jury. On February 2, 1998, the plaintiff was indicted by a grand jury charging him with rape, sexual battery, and official oppression. Then the following events, as reported by the Court of Criminal Appeals, took place:
>
> On September 8, 1998, at an initial settlement conference, the State moved to dismiss the indictments without prejudice stating, "the case is based on the credibility of the victim, and the victim has no credibility at this point." The defendant insisted that the case should be dismissed with prejudice… [and the trial court dismissed the case with prejudice, over the objection of the State.]
>
> * * *
>
> Ten days later, on September 18, 1998, the State filed a motion to amend the judgment to reflect a dismissal without prejudice. On November 2, 1998, the trial court, with the State's consent, treated the State's motion as a motion to reconsider and placed the defendant's

case back on the trial docket.

A year later, on November 5, 1999, the defendant filed a motion to dismiss the indictments. On November 15, 1999, the trial court denied the defendant's motion to dismiss the indictments.… On June 13, 2000, this court granted the defendant's application for an extraordinary appeal pursuant to Rule 10 of the Tennessee Rules of Appellate Procedure.

State of Tennessee v. Carlton B. Parks, No. E2000-00145-CCA-R10-CD, 2001 WL 416738, at *1 (Tenn.Crim.App., filed April 24, 2001), *no appl. perm. appeal filed.* The Court of Criminal Appeals concluded that a "motion to reconsider" was not a Tenn. R.App. P. 4(c) motion that would extend the time after which a judgment would become final. Therefore, the judgment dismissing the charges with prejudice became final after 30 days and the trial court was without jurisdiction or authority to reinstate the original indictments on the trial docket. ***Id.*** at *2. The decision by the Court of Criminal Appeals effectively marked the end to the criminal charges brought against the plaintiff.

On March 10, 1999, the plaintiff filed his first lawsuit in the United States District Court for the Eastern District of Tennessee. The plaintiff sued the City, the City's attorney, W. Shelley Parker ("Parker"), as well as Jimmy Dotson ("Dotson"), Steven M. Parks ("Parks"), and Marvin F. Fuson ("Fuson"). The plaintiff's claims included: (1) a claim against the City and Dotson pursuant to 42 U.S.C. § 1983 for a violation of the plaintiff's procedural due process rights under the Fourteenth Amendment to the United States Constitution; (2) a claim against Dotson and Parks pursuant to 42 U.S.C. § 1983 claiming they violated the plaintiff's First Amendment rights to free speech; and (3) claims against the City for racial discrimination and hostile work environment in violation of: (a) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, ("Title VII"); (b) 42 U.S.C. § 1981; and (c) the Tennessee Human Rights Act, T.C.A. § 4-21-101, *et seq.*, ("the THRA").

On October 2, 2001, the federal district court filed its memorandum opinion granting the defendants' motion for summary judgment as to all of the plaintiff's claims...

After the federal district court had granted the defendants' motion for summary judgment in the first lawsuit, but before that decision had

> been affirmed by the Sixth Circuit, the plaintiff filed a second lawsuit against the City and Parks. In this lawsuit, the plaintiff also sued Carroll and Lieutenant Steven Angel ("Angel") for the first time. The second lawsuit was filed on April 22, 2002, and, like the first lawsuit, was filed in the United States District Court for the Eastern District of Tennessee. In this second lawsuit, the plaintiff sued all four defendants pursuant to 42 U.S.C. § 1983 alleging various constitutional violations arising out of their claimed attempt to illegally or in bad faith revive the criminal case that had originally been dismissed by the criminal court with prejudice. The federal district court described the complaint as asserting "claims under 42 U.S.C. § 1983 (alleging violations of the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution), 42 U.S.C. § 1985(3), 42 U.S.C. § 1986, Tenn.Code Ann. § 4-21-107, and the state law claims of abuse of process, false imprisonment, and malicious prosecution." ...
>
> The defendants filed a motion for summary judgment seeking to have all of the claims dismissed. Following the plaintiff's response to that motion, the federal district court filed a memorandum opinion addressing each of the plaintiff's claims and granting the defendants' motion for summary judgment. *See* ***Parks v. City of Chattanooga,*** No. 1:02-CV-116, 2003 WL 23717092 (E.D.Tenn. December 15, 2003).

Parks I, 2007 WL 27122, at *1-4.

After his lawsuits in federal district court were dismissed on summary judgment at some point in time not evident in the record, Mr. Parks filed an action in the Hamilton County Circuit Court on November 4, 2005, suing the same defendants as in his first two lawsuits. *Id.* at *5. The trial court granted summary judgment on *res judicata* grounds, and this court affirmed in *Parks* I. *Id*. at *8.

At some point in time unrevealed in the record, Mr. Parks filed another lawsuit in the United States District Court for the Eastern District of Tennessee, this time naming as defendants Judge Douglas A. Meyer, the judge who presided over the criminal action against him; District Attorney General William H. Cox, III, and Executive Assistant District Attorney General David W. Denny, who prosecuted the criminal action against him; the State of Tennessee; and Hamilton County, Tennessee. On May 27, 2003, the federal district court granted summary judgment on Mr. Parks' federal law claims in favor of the State of Tennessee, and the individual Defendants. On March 30, 2004, the federal district court granted summary judgment in favor of Hamilton County on the

federal claims.[1] The federal district court declined to exercise jurisdiction over Mr. Parks' state law claims.

Mr. Parks, undaunted by the lack of success in his first four lawsuits, filed this action in the Circuit Court for Hamilton County on March 28, 2005, alleging various state law claims against the same defendants named in his fourth lawsuit. Specifically, Mr. Parks enumerated the following claims as stated in his complaint: negligence, negligence *per se*, gross negligence, negligent misrepresentation, extortion, abuse of process, Tennessee Consumer Protection Act violations, false imprisonment, breach of contract, tortious interference with an employment contract, malicious prosecution, civil conspiracy, "procedural and substantive due process" violations, and *respondeat superior*. All of Mr. Parks' claims arose from the circumstances surrounding the attempt by Mr. Cox and Mr. Denny to have the Hamilton County Criminal Court alter or amend its September 8, 1998 judgment dismissing the criminal charges to reflect a dismissal without prejudice, instead of with prejudice as initially entered; and Judge Meyer's judgment agreeing to make such a change, thereby ostensibly reviving the charges against Mr. Parks and placing his criminal case back on the court's docket.

After all of the judges on the Eleventh Judicial District recused themselves, Judge John B. Hagler, Jr. of the Tenth Judicial District was designated to hear the case. Hamilton County answered and filed a motion to dismiss on the ground that the complaint was not timely filed within the period provided by the applicable statute of limitations. The remaining Defendants answered and moved for dismissal on the grounds, *inter alia*, of sovereign immunity, judicial immunity, and prosecutorial immunity. The trial court granted the Defendants' motions and dismissed Mr. Parks' complaint.

II. Issue Presented

Mr. Parks appeals, raising the issue, as restated, of whether the trial court erred in granting the Defendants' motions to dismiss his complaint, on grounds that the statute of limitations had run and that the Defendants were immune from liability under the doctrines of sovereign immunity, judicial immunity, and prosecutorial immunity.

III. Standard of Review

The record before us contains, among other documents outside the pleadings, transcripts of several 1998 hearings in Hamilton County Criminal Court before Judge Meyer and pertaining to Mr. Parks' criminal prosecution. Because these are matters outside the pleadings that were apparently considered by the trial court, we must treat the motion to dismiss as one filed pursuant to Tenn. R. Civ. P. 56, *i.e.*, as a motion for summary judgment. *See* Tenn. R. Civ. P. 12.02 ("If...matters outside

[1]The federal district court's orders state only that "[i]n accordance with the accompanying Memorandum, the Court GRANTS the Motion to Dismiss... ." The accompanying memoranda presumably setting forth the grounds upon which the district court granted the motions, and its rationale, are not included in the record; therefore, we cannot tell from this record what grounds the district court relied upon in dismissing Mr. Parks' federal claims.

the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56."); *Hart v. Joseph Decosimo and Co., LLP*, 145 S.W.3d 67, 71 (Tenn. Ct. App. 2004).

To be entitled to a summary judgment, the moving party must demonstrate that no genuine issues of material fact exist and that he or she is entitled to judgment as a matter of law. *See* Tenn. R. Civ. P. 56.04; *Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993); *Planet Rock, Inc. v. Regis Ins. Co.*, 6 S.W.3d 484, 490 (Tenn. Ct. App. 1999). A summary judgment should not be granted, however, when a genuine dispute exists with regard to any material fact. *Seavers v. Methodist Med. Ctr. of Oak Ridge*, 9 S.W.3d 86, 91 (Tenn. 1999). Our task on appeal is to review the record to determine whether the requirements for granting summary judgment have been met. *See Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997); *Aghili v. Saadatnejadi*, 958 S.W.2d 784, 787 (Tenn. Ct. App. 1997). Tennessee Rule of Civil Procedure 56.04 provides that summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, *see Byrd v. Hall*, 847 S.W.2d at 210; and (2) the moving party is entitled to a judgment as a matter of law on the undisputed facts. *See Anderson v. Standard Register Co.*, 857 S.W.2d 555, 559 (Tenn. 1993). A party seeking a summary judgment must demonstrate the absence of any genuine and material factual issues. *Byrd v. Hall*, 847 S.W.2d at 214.

When the party seeking summary judgment makes a properly supported motion, the burden shifts to the non-moving party to set forth specific facts establishing the existence of disputed, material facts which must be resolved by the trier of fact. *See Byrd v. Hall*, 847 S.W.2d at 215; *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn. 1997). The non-moving party may not simply rest upon the pleadings, but must offer proof by affidavits or other discovery materials (depositions, answers to interrogatories, and admissions on file) provided by Rule 56.06 showing that there is a genuine issue for trial. If the non-moving party does not so respond, then summary judgment, if appropriate, shall be entered against the non-moving party. Tenn. R. Civ. P. 56.06.

Summary judgments do not enjoy a presumption of correctness on appeal. *See Nelson v. Martin*, 958 S.W.2d 643, 646 (Tenn. 1997); *City of Tullahoma v. Bedford County*, 938 S.W.2d 408, 412 (Tenn. 1997). Accordingly, when we review a summary judgment, we view all the evidence in the light most favorable to the non-movant, and we resolve all factual inferences in the non-movant's favor. *See Luther v. Compton*, 5 S.W.3d 635, 639 (Tenn. 1999); *Muhlheim v. Knox County Bd. of Educ.*, 2 S.W.3d 927, 929 (Tenn. 1999). A summary judgment will be upheld only when the undisputed facts reasonably support one conclusion - that the moving party is entitled to a judgment as a matter of law. *See White v. Lawrence*, 975 S.W.2d 525, 529 (Tenn. 1998); *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995).

IV. Analysis

A. Statute of Limitations as to Hamilton County

As already noted, the events that gave rise to this lawsuit all occurred in 1998 or 1999. The latest event of which Mr. Parks complains occurred in November of 1999, when Judge Meyer denied his motion to dismiss the indictments against him, leading to Mr. Parks' successful extraordinary appeal to the Tennessee Court of Criminal Appeals. The Court of Criminal Appeals dismissed the indictments against Mr. Parks on April 24, 2001, which is the latest possible date the statute of limitations could arguably have began to run on Mr. Parks' claims.[2] Mr. Parks' action against Hamilton County is governed by the Tennessee Governmental Tort Liability Act ("GTLA"), which provides that actions against governmental entities "must be commenced within twelve (12) months after the cause of action arises." Tenn. Code Ann. § 29-20-305(b); *Doyle v. Frost*, 49 S.W.3d 853, 858 (Tenn. 2001). Mr. Parks relies on the saving statute found at Tenn. Code Ann. § 28-1-115, which provides:

> Notwithstanding any applicable statute of limitation to the contrary, any party filing an action in a federal court that is subsequently dismissed for lack of jurisdiction shall have one (1) year from the date of such dismissal to timely file such action in an appropriate state court.

Mr. Parks argues that the present action was filed within one year of the dismissal of his federal lawsuit on March 30, 2004. Our courts have uniformly held, however, that the saving provision of Tenn. Code Ann. § 28-1-115 "may not be applied to extend the period within which an action must be filed under the GTLA." *Lynn v. City of Jackson*, 63 S.W.3d 332, 337 (Tenn. 2001); *accord Doyle*, 49 S.W.3d at 858; *Sanders v. Traver*, 109 S.W.3d 282, 284 (Tenn. 2003); *Nance v. City of Knoxville*, 883 S.W.2d 629, 631 (Tenn. Ct. App. 1994). Similarly, in *Gore v. Tennessee Dept. of Correction*, 132 S.W.3d 369, 379 (Tenn. Ct. App. 2003), the court noted:

> Tennessee Code Annotated sections 28-1-105 and 28-1-115 do not specifically state that they are applicable to the sovereign State of Tennessee. These statutes have been held to be in derogation of sovereign immunity and [are] not effective to toll any statute of limitations as to the State of Tennessee.

Thus, it is clear that the present action was not filed within the statutory limitations period, and the trial court did not err in dismissing it for that reason.

B. Sovereign Immunity as to State of Tennessee and State Officers

[2] We do not express an opinion as to exactly when the statute of limitations began to run on Mr. Parks' claims; we simply note that the latest date it could possibly be argued (and the date the State and individual Defendants argue that it did begin) occurred more than twelve months before the date Mr. Parks commenced his action.

Further, as the State argues, Tenn. Code Ann. § 20-13-102 provides that the Circuit Court for Hamilton County does not have jurisdiction to hear lawsuits against the State, or State officers acting by authority of the State:

> (a) No court in the state shall have any power, jurisdiction, or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds, or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea, or demurrer of the law officer of the state, or counsel employed for the state.

The General Assembly has provided that the Tennessee Claims Commission has "exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of 'state employees'..." Tenn. Code Ann. § 9-8-307(a); *Conley v. State*, 141 S.W.3d 591, 597 (Tenn. 2004); *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000). Under these statutes, the State, generally shielded from suit under well-established principles of sovereign immunity, has not consented to be sued in Hamilton County Circuit Court, and the trial court therefore did not have jurisdiction to hear Mr. Parks' action against the State of Tennessee and Judge Meyer, District Attorney Cox, and Executive Assistant District Attorney Denny, in their official capacities as State employees.

C. Judicial and Prosecutorial Immunity as to Judge Meyer, Mr. Cox, and Mr. Denny

Further, we hold that the trial court was correct in dismissing the claims against Judge Meyer, Mr. Cox, and Mr. Denny because they were immune from personal liability based on the doctrines of judicial immunity and prosecutorial immunity. It is clear from the record that the actions about which Mr. Parks complains, and upon which he bases his cause of action, were taken by the Defendants in the course of and in furtherance of their official duties as prosecutors and judge. In his complaint and his appellate brief, Mr. Parks quotes from the following events of a September 8, 1998 hearing in criminal court, as recorded in the official transcripts contained in the record, as factual basis for his complaint:

> ASSISTANT DA BRYAN: Your Honor, the State's going to move to dismiss the cases against Carlton Parks. DNA testing came back negative for him and that there were two other sperm donors.
>
> MR. PARKS' ATTORNEY: Under the facts of the DNA testing announced by the district attorney, we would ask that it be dismissed with prejudice.
>
> MR. BRYAN: We would ask that it be without prejudice, Your Honor. I realize that the defendant has been through a lot in regard

> to this. The victim's credibility has certainly been destroyed, I think, by the DNA testing...The detectives, I think, still feel that there may be something to it. In that regard, if something should come up in the future, it would allow us to continue with the case.
>
> But as far as the file I have before me now and the information I've been supplied with, when taken in total, the case is based on the credibility of the victim and the victim has no credibility at this point.
>
> * * *
>
> THE COURT: Well, if you're insisting on going ahead with a trial, of course, and the State's not ready to go ahead, then, of course, it would be dismissed with prejudice, because he's entitled to clear his name if he's insisting on a trial.
>
> MR. PARKS' ATTORNEY: Well, Your Honor, if –
>
> MR. BRYAN: And I will state for the record we would be unable to go to trial at this time.
>
> THE COURT: So let it be dismissed with prejudice.

Mr. Parks alleges that after Judge Meyer dismissed the case with prejudice, certain officials in the Chattanooga Police department and city government "found out that the case had been dismissed and they were highly upset." On September 18, 1998, the State, acting through Mr. Cox, filed a "motion to amend judgment" requesting the court to amend the judgment to reflect a dismissal without prejudice. Judge Meyer heard the motion on November 2, 1998; the transcript reflects that Mr. Parks was not present until the end of the hearing, and his attorney was never present at the hearing. At the November 2 hearing, the following discussion took place, in relevant part:

> THE COURT: You filed your motion to amend the judgment with – ten days after, so I could treat that as a motion to reconsider. I don't think there's any merit to your motion because, see, when the State moves to dismiss and the defendant objects, it has to be with prejudice because the defendant has a right to a speedy trial. That's the constitutional issue.

MR. DENNY: I understand that, Your Honor.

THE COURT: But what I'll do is treat your motion as a motion to reconsider.

MR. DENNY: I thought that's what it was filed as, a motion to reconsider?

THE COURT: No, it's a motion to amend judgment. "Motion to Amendment Judgment" is how it's styled, but motion to reconsider, I'll reconsider –

MR. DENNY: Right.

THE COURT: –and we can put it back, put it back the way it was.

* * *

THE COURT: You want to set this thing for trial over in February or March? Because, see, that's what he's going to do. He's going to say he has a right to a speedy trial.

MR. DENNY: Right, and we're prepared to give him one.

MR. DENNY: ...Yeah. And Bill [Cox] was going to go ahead and just orally move to change the style, amend the style to "Motion to Reconsider."

MR. COX: "And/or Motion to Amend."

THE COURT: We'll restore it to the docket since you filed it within ten days of the, of the dismissal.

* * *

MR. COX: They'll probably appeal though.

> THE COURT: Yeah, well, but see, the fact you filed it within ten days I think will cut it off.
>
> * * *
>
> THE COURT: Tell Mr. Parks to come back in. He's out, he went out. (Thereupon, Mr. Parks returned to open court.)
>
> THE COURT: All right. General Cox, you're actually, in the Carlton Parks matter, moving to reconsider the dismissal?
>
> MR. COX: Yes, Your Honor.
>
> THE COURT: Okay. I'll sustain your motion and we will restore it to the docket for trial, and we will put it over to Friday, which is our normal arraignment date anyhow, and pick a trial date at that time.

Four days later, at another hearing, Judge Meyer gave Mr. Parks' attorney an opportunity to argue the merits of the State's "motion to reconsider," and Mr. Parks' counsel was unable to persuade the judge he was in error. Over a year later, on November 15, 1999, Judge Meyer presided at the hearing of Mr. Parks' motion to dismiss the indictments. Mr. Parks quotes the following exchange between Judge Meyer and his attorney at that hearing, as reflected in the transcript:

> THE COURT: I don't care whether I was doing him [Mr. Parks] a favor or not. The question is, when they file a motion within ten days, do I have the authority to restore it, not procedurally, I don't care about the procedure.
>
> MR. PARKS' ATTORNEY: Well, Judge, it is a procedural question. It is strictly a procedural question. It's –
>
> THE COURT: Do I have the authority to restore it to the docket?
>
> MR. PARKS' ATTORNEY: No, sir, Judge, under these facts, I submit, Your Honor.

> THE COURT: Then you can note an exception. Let your motion be denied.

As already noted, the Tennessee Court of Criminal Appeals granted Mr. Parks permission to take an extraordinary appeal and reversed Judge Meyer's judgment, finding that the dismissal with prejudice had become final 30 days after entry, and was not tolled by the State's motion "to amend judgment" or "to reconsider." *State v. Parks,* No. E2000-00145-CCA-R10-CD, 2001 WL 416738 (Tenn. Crim. App., filed April 24, 2001).

In the instant case, the trial court ruled that Judge Meyer was protected from a lawsuit seeking to impose personal liability by operation of the doctrine of judicial immunity. It is a long-established rule in Tennessee that judges are absolutely immune from lawsuits for acts performed in the exercise of their judicial functions. *Webb v. Fisher,* 72 S.W. 110, 111 (Tenn. 1903); *Harris v. Witt,* 552 S.W.2d 85 (Tenn. 1977); *Bryant-Bruce v. State,* No. M2002-03059-COA-R3-CV, 2005 WL 2384696, at *6 (Tenn. Ct. App. M.S., Sept. 27, 2005). "Absolute judicial immunity is supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability." *Bryant-Bruce,* 2005 WL 2384696, at *6. The Supreme Court stated the rule, and the narrow exception where an act is knowingly done in the clear absence of all jurisdiction, in the case of *Heath v. Cornelius* as follows:

> (J)udges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over . . . the subject-matter, any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend.

The rule was also expressed in *Boles v. Cox*, 252 F.Supp. 173 (E.D.Tenn.1966):

> 'Where there is jurisdiction over the subject matter and the person there is immunity, and even though a judge acts in excess of his jurisdiction the immunity remains. . . . But where an act is done in the

> clear absence of all jurisdiction and this is known to the judge there is no immunity.'

Heath v. Cornelius, 511 S.W.2d 683, 684-85 (Tenn. 1974), *quoting Bradley v. Fisher*, 80 U.S. 335 (1872). In the instant case, the actions of Judge Meyer clearly do not fall within the narrow exception to the rule of judicial immunity. Although the Court of Criminal Appeals held that Judge Meyer acted in excess of his authority by operation of the rule that a trial court generally loses jurisdiction after its order becomes final 30 days after entry, Tenn. R. App. P. 4, he obviously did not operate "in the clear absence of all jurisdiction" as contemplated by the exception to the rule of immunity. The mere fact that Judge Meyer erroneously applied the law, as corrected by the appellate court, does not expose him to potential liability for his error. Were it otherwise, the significant benefit conferred on the public by the operation of judicial immunity, in ensuring an independent judiciary, *see Webb v. Fisher*, 72 S.W. at 111-12, would be greatly diminished. We hold the trial court was correct in dismissing Mr. Parks' complaint against Judge Meyer because of his judicial immunity.

For reasons quite similar to those supporting judicial immunity, prosecutors are likewise immune from liability for actions taken in their capacity as an advocate for the State. Among the reasons for this rule is "the concern that harassment by unfounded litigation would divert a prosecutor's time and attention from his or her official duties and would create the possibility that the prosecutor would shade his or her decisions instead of exercising independence of judgment required by the public trust." *Bryant-Bruce*, 2005 WL 2384696, at *7. The Supreme Court stated the rule regarding both absolute and qualified prosecutorial immunity as follows:

> [A] prosecutor is potentially liable (in other words, possesses only qualified, rather than absolute, immunity) for actions taken in an investigative or administrative capacity, but not in his capacity as an advocate for the State.

Shell v. State, 893 S.W.2d 416, 422 (Tenn. 1995). The actions of Mr. Cox and Mr. Denny cited and relied upon by Mr. Parks in support of his complaint are largely those statements quoted above from the hearing transcripts. The essence of Mr. Parks' allegation is that these Defendant prosecutors wrongfully and maliciously tried to institute a "second prosecution" of the same unfounded criminal charges against him, knowing there was insufficient proof supporting the charges. It is readily apparent that this claim arises from actions taken by Defendants Cox and Denny in their prosecutorial capacity as advocates for the State. The trial court was therefore correct in holding them absolutely immune from liability arising from these actions and dismissing Mr. Parks' action against them in their individual capacities.

V. Conclusion

For the aforementioned reasons, the judgment of the trial court is affirmed in its entirety. Costs on appeal are assessed to the Appellant, Carlton B. Parks.

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SHARON G. LEE, JUDGE