

Kentucky Court Of Appeals
Cases of Note
May-June, 2023

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1. Hold down the control (“Ctrl”) key and click on the link.
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MYRANDA JUAREZ v. BROOKE SCHILLING, ET AL.

2021-CA-1065-MR 5/05/2023 2023 WL 3261402

Opinion by JONES, ALLISON; CALDWELL, J. (CONCURS) AND GOODWINE, J. (CONCURS) Appellant, a volunteer member of the Parent Teacher Association at her children’s elementary school, was interrupted while she finished breastfeeding her infant child in the school gymnasium by Appellees, staff members of the school. Appellees allegedly told Appellant she could not openly breastfeed. Appellant contended that this incident caused her anxiety and distress. She filed suit in Jefferson Circuit Court against Appellees, alleging a violation of her right to breastfeed under KRS 211.755, and this statutory violation constituted a claim of per se negligence under KRS 446.070. Appellant further alleged the statutory violation was a form of workplace gender discrimination cognizable as a civil rights violation under KRS Chapter 344. The trial court granted summary judgment to Appellees, finding that the Appellant did not suffer an actual injury and that the Appellees did not “interfere” with Appellant’s breastfeeding by merely asking her to move to an office. The trial court also found that KRS Chapter 344 did not apply to the Appellant for a claim of sex discrimination in the workplace as she was not an employee of the school, and she failed to provide expert proof allowing emotional damages. Finally, the trial court found that the Appellees were protected against suit based on qualified official immunity. The Court of Appeals affirmed in part, reversed in part, and remanded. The Court agreed with the trial court that Appellant was not an employee of the school, meaning she was not covered by the workplace protections of KRS Chapter 344. Further, the Court agreed that Appellant could not recover emotional distress damages because she failed to provide expert proof of those damages pursuant to the rule in Osborne v. Keeney, 399 S.W.3d 1, 17 (Ky. 2012). However, the Court of Appeals concluded that the Appellees were not protected from suit on the grounds of qualified official immunity because compliance with the clear mandate of the breastfeeding statute was a ministerial duty. Finally, the Court held that the trial court erred in deciding that Appellant did not provide enough evidence of injury, as a finding of per se negligence could have resulted in nominal damages, to which punitive damages could theoretically have attached. The Court of Appeals remanded the matter to the circuit court for further proceedings.

JAIME MORALES v. CITY OF GEORGETOWN, KENTUCKY, ET AL.

2022-CA-0009-MR 5/12/2023 2023 WL 3398192

Opinion by ACREE, GLENN E.; MCNEILL, J. (CONCURS) AND THOMPSON, C.J. (CONCURS) Appellant, a former special deputy with the Scott County Sheriff’s Office (SCSO), was shot during a mission to apprehend a fugitive and became paralyzed as a result. Because the fugitive never discharged his weapon, it is almost certain a fellow member of law enforcement shot Appellant. Most, but not all, mission participants were members of the Special Response Team (SRT), a team consisting of members from both the Georgetown Police Department (GPD) and the SCSO. It was disputed whether the mission was an official SRT operation. Appellant

sued GPD Lieutenant James Wagoner, GPD Officer Joseph Enricco, the City of Georgetown (City), and the GPD for negligence. Appellant argued Wagner, as one of the SRT Commanders, negligently failed to create and communicate a tactical and operational plan to apprehend the fugitive, failed to adequately supervise the mission, failed to adequately train team members, failed to enforce training attendance requirements, and failed to ensure all team members wore protective equipment during the mission. Appellant alleged Enricco negligently discharged his firearm during the mission. And, Appellant asserted the City and GPD were directly liable for failure to enforce training requirements and vicariously liable for the actions of Enricco and Wagoner. The Scott County Circuit Court granted summary judgment for all defendants, applying qualified official immunity to each defendant. The circuit court also determined the City and GPD were entitled to immunity under the Claims Against Local Governments Act (CALGA), KRS 65.200 et seq. Appellant appealed, challenging the circuit court's application of qualified official immunity. The Court of Appeals affirmed in part, reversed in part, and remanded. The Court determined the circuit court properly applied qualified official immunity to Wagoner for his creation and communication of an operational plan to apprehend the fugitive, for his supervision of the mission, and for conducting SRT trainings and selecting training material. Each of these are discretionary, rather than ministerial, functions, and therefore, qualified official immunity applies to alleged negligent performance of these actions. However, the Court concluded the obligation to enforce training requirements is ministerial, and the circuit court therefore erred in applying qualified official immunity to Wagoner for that obligation. Further, the Court identified three genuine questions of material fact related to Wagoner's alleged obligation to ensure team members wore their protective equipment during the mission, and the Court accordingly determined the circuit court prematurely granted summary judgment on this point. The Court also determined Wagoner would only be entitled to immunity under CALGA for his discretionary acts and obligations. As to Enricco, the Court determined the circuit court did not err in applying qualified official immunity to his decision to exercise deadly force during the mission to apprehend the fugitive because it was discretionary. As to the City and GPD, the Court concluded they may ultimately be vicariously liable for Wagoner's actions should primary liability attach to him because CALGA does not shield governmental entities from vicarious liability for the ministerial actions of its employees. The Court also affirmed the dismissal of direct liability claims against the City and GPD because alleged incompetent performance of governmental decision-making is not a subject of tort liability.