

<p>SCEPTER, INC.,</p> <p style="padding-left: 40px;">Plaintiff/Appellant,</p> <p>VS.</p> <p>HUMPHREYS COUNTY, TENNESSEE and THE HUMPHREYS COUNTY AIRPORT AUTHORITY,</p> <p style="padding-left: 40px;">Defendant/Appellee.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Appeal No. 01A01-9612-CH-00540</p> <p>Humphreys County Chancery Case No. 23-232</p>
---	---	--

FILED

August 29, 1997

Cecil W. Crowson
Appellate Court Clerk

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT OF HUMPHREYS COUNTY
AT WAVERLY, TENNESSEE

HONORABLE ROBERT E. BURCH, JUDGE

Leah G. Gossett, #16698
James R. Buckner
MILLER & MARTIN
Suite 1000, Volunteer Building
832 Georgia Avenue
Chattanooga, TN 37402-2289
ATTORNEYS FOR PLAINTIFF/APPELLANT,

John Lee Williams
PORCH, PEELER, WILLIAMS & THOMASON
102 South Court Square
Waverly, TN 37185-2198
ATTORNEY FOR DEFENDANT/APPELLEE

REVERSED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCURS:

SAMUEL L. LEWIS, JUDGE
BEN H. CANTRELL, JUDGE,

SCEPTER, INC.,)	Appeal No.
)	01A01-9612-CH-00540
Plaintiff/Appellant,)	
)	
VS.)	Humphreys County Chancery
)	Case No. 23-232
HUMPHREYS COUNTY, TENNESSEE)	
and THE HUMPHREYS COUNTY)	
AIRPORT AUTHORITY,)	
)	
Defendant/Appellee.)	

O P I N I O N

This is a suit to enforce an oral lease of airport hanger privileges at a county-owned airport.

The Trial Court entered the following judgment:

This cause came on to be heard this date upon the complaint filed by the Plaintiffs, the motion to dismiss filed by the Defendants, arguments of the Solicitors for the parties, and the entire record in the cause. From all of which the Court finds the motion to dismiss to be well taken.

IT, THEREFORE, CONSIDERED AND ORDERED BY THE COURT, That the (sic) this suit is hereby dismissed. The costs are taxed to the Plaintiff for which execution shall issue if becoming necessary.

The record contains no other expression of the reasons for the judgment. The motion to dismiss referred to in the judgment read as follows:

Defendants move the Court for entry of an order dismissing the claims of Plaintiff pursuant to Tennessee Rule of Civil Procedure 12.02(1) for the reason that this Court lacks jurisdiction over the subject matter of this suit. Specifically, Tennessee Code Annotated Section 42-5-122(c) provides that municipalities (which include counties by definition) and their agents are immune from actions or suits arising out of “maintenance, operation, superintendence, or management of a municipal airport.”

Humphreys County owns and operates the public airport, the operation of which is the subject of the present suit.

Humphreys County Airport Authority is (sic)

executive agent of Humphreys County for the purpose of operating and managing this public airport.

Both Defendants are immune from the present suit in this case by reason of the said statute.

Wherefore, Defendants pray that the Court dismiss this suit for lack of jurisdiction over the subject matter resulting from the immunity therefrom granted by statute.

T.C.A. § 42-5-122, cited in the motion, reads in pertinent part as follows:

(c) No action or suit shall be brought or maintained against any municipality, or its officers, agents, servants or employees, in or about the construction, maintenance, operation, superintendence, or management of any municipal airport.

(d) Nothing in this section shall be construed to prohibit any action, suit, or proceedings by or on behalf of any holder of bonds of a municipality heretofore or hereafter issued for airport purposes of whatsoever nature, pursuant to this chapter, or pursuant to any other section or chapter of this Code, or any other general or special law or charter. [Acts 1957, ch. 375, § 5; T.C.A., § 42-326.]

The complaint alleged:

3. The Humphreys County Airport Authority purports to be a public body created by resolution of the Humphreys County Commission in December, 1992. It purports to act for the county with respect to the management and regulation of the Humphreys County Authority. Apparently, the Authority was created pursuant to T.C.A. § 42-3-103.

- - - -

5. Rock Abou-Sakher (“Sakher”) is a citizen and resident of Humphreys County, Tennessee. He served as manager of the Humphreys County Airport at least through the end of 1995. Sakher had actual and/or apparent authority to enter contracts on behalf of the county with respect to matters within the ordinary course of business of the Humphreys County Airport.

6. As manager of the Humphreys County Airport, Sakher on behalf of the County entered a lease agreement with Scepter. This lease agreement was a year to year agreement that has been renewed annually every year since 1988. From 1988 through March, 1996, Scepter has paid rent monthly. Each rent payment has been delivered to and accepted by the County or the Authority.

7. The lease agreement between the County and Scepter is an oral lease, many of the terms of which have been defined by the course of dealing between the parties, the regular business practices of the Airport, and the customary practices of rural municipal airports in general. For example, Scepter has throughout its occupancy of a portion of the Airport driven vehicles onto the tarmac in order to load and unload airplanes. Further, throughout the lease term pilots and passengers have parked vehicles in the hangar while on trips. Most importantly, Scepter has had access to its hangar space for 24 hours a day 365 days a year. Such access is a material aspect of the lease agreement as Scepter officers and employees often must travel for business purposes or return from business trips outside the scope of regular business hours.

8. Recently, the Airport Authority, acting as the agent of the County, breached the lease agreement between the County and Scepter. In addition, the Authority has attempted to impose various rules and regulations on Scepter, as lessee, that are outside the scope of the statutory authority granted to a municipal airport authority.

- - - -

14. Scepter seeks monetary damages with respect to those damages that can be quantified. Scepter also seeks a preliminary and permanent injunction pursuant to Rule 65 of the Tennessee Rules of Civil Procedure preventing the County and the Authority from unlawfully detaining the leased premises from Scepter.

- - - -

22. As the lessee of space at the Humphreys County Airport, Scepter seeks a preliminary and permanent injunction prohibiting the enforcement of the traffic rules and regulations in Section 2 of the Authority's ***General Rules and Regulations***.

T.C.A. § 42-3-108 cited in the complaint, reads in pertinent part as follows:

General powers - Motor vehicle traffic regulations. -

(a) An authority shall have all the powers necessary or convenient to carry out the purposes of this chapter (excluding the power to levy and collect taxes of special assessments) including, but not limited to, the power to:

(a) (A) Sue and be sued;

- - - -

(D) Have such immunity in tort cases as do municipalities under the Municipal Airport Act, compiled in chapter 5 of this title;

- - - -

(2) Execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter.

An uncertified unauthenticated copy of the General Rules and Regulations of the Defendant County Commission is attached to the complaint.

Plaintiff filed a motion for temporary and permanent restraining order to enforce the lease supported by an affidavit.

Defendants filed a response to the motion admitting that the regulations of the Commission deny use of hangar space for individuals. The response is supported by affidavit that the Commission is the executive agent of the County, admitting that the regulations of the Commission exclude automobiles from hangars, and asserting that the Commission does not have full control of the airport because Rock Abou-Sakher, whose lease expired on March 1, 1996, has not yet surrendered possession. Attached to said response or affidavit is an uncertified and unauthenticated copy of a complaint of the County against said Sakher, a "Fixed Base Operator's Lease Agreement" and final decree invalidating the action of the County Commission in creating the County Airport Commission for violation of the Open Meetings Law. Also attached to the response or affidavit is an unauthenticated and uncertified transcript of the oral comments of the Trial Judge in respect to his judgment invalidating the creation of the Airport Commission. Also attached to the response or affidavit is an unauthenticated and uncertified copy of a letter from the County Executive and Chairman of the Airport Commission to Rock Abou-Sakher.

This completes a survey of the record upon which this Court is expected to resolve the issues on appeal which, according to the plaintiff-appellant, are:

1. Whether The Court Erred In Dismissing This Case Based On T.C.A. § 42-5-122(c) Which Provides:

No Action or suit shall be brought or maintained against any municipality or its officers, agents, servants, or employees, in or about the construction, maintenance, operation, superintendence, or management of any municipal airport.

II. Whether The Trial Court's Ruling Violates Article I, Section 20 of the Tennessee Constitution By Rendering The Contract Between Scepter And The Defendants Unenforceable.

According to the defendants, the issue on appeal is:

The single issue in this case is whether or not as a matter of law Section 42-5-122(c), Tennessee Code Annotated, immunizes Humphreys County and its Airport Authority from the particular claims and demands made by the Plaintiff-Appellant in this case.

From the above summarized record, the threshold issue appears to be whether the plaintiff's suit should be dismissed because of T.C.A. § 42-5-122(c) which exempts the defendants from actions or suits arising from "construction, maintenance, operation, superintendence, or management of a municipal airport."

It appears that the gravamen of the action stated in the complaint is the breach of a lease contract, that the primary defense is immunity, and that the plaintiff's rejoinder to the defense is that the immunity granted by the statute was intended by the Legislature to apply only to tortious misconduct corresponding to that mentioned in the Tennessee Governmental Tort Liability Act, T.C.A. §§ 29-20-101, et seq.

The interpretation of a statute is generally a matter of law for the courts. *Winter v. Smith*, Tenn. App. 1995, 914 S.W.2d 527.

However, in determining the applicability of a statute to a given situation, the determination of the nature of the situation involves a finding of facts as to the pertinent details of the situation.

The basic function of statutory construction is to ascertain and give effect to the legislative intent. *Storey v. Bradford Furniture Co., Inc.*, Tenn. App. 1995, 910 S.W.2d 857; *Owens v. State*, Tenn. App. 1995, 908 S.W.2d 923

A study of The Tennessee Governmental Tort Liability Act fails to disclose a specific provision excluding its application to contracts, but the overt mention of torts without a corresponding mention of contracts is persuasive grounds for limiting the immunity granted by 42-5-122(c) to actions for tortious conduct.

Also persuasive is T.C.A. § 42-5-122(d), quoted above, preserving the rights of bond holders to sue to enforce their rights as bond holders. A bond is a promise to pay which is a contract.

It would be most anomalous to hold that the Legislature intended to authorize municipalities to issue bonds but to immunize the issuer from suits to collect the bonds.

It is clear to this Court that the legislative intent in enacting the Municipal Airport Act, including T.C.A. § 42-5-122(c) was to limit the application of the granted immunity to the class of cases immunized by the Governmental Tort Liability Act, T.C.A. § 29-20-205(2)(3)(4).

Also persuasive is T.C.A. Title 9, Chapter 8 which provides procedure to obtain payment of claims for performing contracts with the State.

Some argument is made as to the effect of the population classification of cities and counties in T.C.A. § 42-4-107(19) of the Metropolitan Airport Authority Act. However, no evidence is cited or found as to the population of Humphreys County.

It is pled (but not supported by competent evidence), that the creation and election of the defendant's commission has been invalidated by judicial decree. On remand the facts should be properly proven and adjudged. If it be determined that the Commission has not been validly created, it should be dismissed from this proceeding, leaving only the County to defend.

The parties pled but did not establish factually that the oral lease asserted by plaintiff was entered into on behalf of the County by an airport manager acting for the county or by a lessee base operator who entered into a sublease with the plaintiff. The facts in this regard need to be ascertained and adjudged on remand.

Also needing resolution is the question of whether the non-existence of the Commission affects the holdover rights claimed by plaintiff.

The judgment of the Trial Court dismissing the suit of plaintiff is reversed and vacated and the cause is remanded to the Trial Court for further procedure in conformity with this opinion. Costs of this are taxed against the defendant Humphreys County.

REVERSED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE