

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 14, 2015 Session

JOANN LUNA v. WHITE COUNTY, TENNESSEE, ET AL.

**Appeal from the Circuit Court for White County
No. CC2434 John J. Maddux, Jr., Judge**

No. M2014-02111-COA-R3-CV – Filed June 29, 2015

Suit against the Sheriff and Deputy Sheriff of White County, as well as White County, to recover damages for Plaintiff's asserted causes of action for negligence, negligent infliction of emotional distress, invasion of privacy, false arrest, false imprisonment, malicious prosecution, abuse of process, and violations of the Tennessee Constitution, arising out of her arrest and incarceration. The Defendants sought summary judgment on the grounds, *inter alia*, that the Governmental Tort Liability Act and public duty doctrine barred certain of the claims against the County and that the claims against the Sheriff and Deputy Sheriff were barred by the Governmental Tort Liability Act and by common law qualified immunity. The trial court granted the motion and dismissed the case. Discerning 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

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P. J., M. S., and ANDY D. BENNETT, J., joined.

Richard Marshall Brooks, Carthage, Tennessee, for the appellant, Joann Luna.

W. Carl Spinning and Michael T. Schmitt, Nashville, Tennessee, for the appellee, Steve Page, White County Sheriff, White County Tennessee.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

This appeal arises out of a suit brought by Joann Luna, a resident of Sparta, Tennessee, to recover damages for her arrest and imprisonment. Ms. Luna filed suit

against White County, Sheriff Oddie Shoupe, in his individual and official capacities, and Deputy Steve Page, in his individual and official capacities (collectively “Defendants”) under the Tennessee Governmental Tort Liability Act (“GTLA”), Tenn. Code Ann. § 29-20-101, *et. seq.* She asserted causes of action based on negligence, negligent infliction of emotional distress, invasion of privacy, false arrest, false imprisonment, malicious prosecution, abuse of process, and violations of the Tennessee Constitution¹; she also asserted that the County was liable under Tenn. Code Ann. § 8-8-301, *et. seq.*, for the actions of Sheriff Shoupe and Deputy Page who “act[ed] by virtue of and under the color of their offices as deputies employed by White County”² The County, Sheriff Shoupe, and Deputy Page answered the complaint, denying liability and asserting various affirmative defenses.

In due course, Defendants moved for summary judgment on the grounds that there is no private right of action under the Tennessee Constitution for the claims asserted by Plaintiff; that the County was immune from liability under the GTLA; that Sheriff Shoupe and Deputy Page were immune from all claims against them under the GTLA and common law qualified immunity; and that all of the claims were barred by the public duty doctrine. After a hearing, the court granted the motion on all grounds.

Ms. Luna appeals, contending that the court erred in holding that the GTLA did not remove the County’s immunity, and that Sheriff Shoupe and Deputy Page were entitled to qualified immunity.³

¹ The complaint did not specify the particular constitutional guarantees Defendants were alleged to have violated. We have determined that Ms. Luna’s allegations that she had to sleep on a plastic mat on a concrete floor “with just a sheet to cover with,” hold her “bodily waste for periods of 30 minutes or longer after notification to the guards,” and share a “very small holding cell for overnight periods with, at times, two other women” invokes the guarantee of humane treatment of prisoners at Art. I § 32. The allegation that she “was imprisoned for thirteen days without a hearing, the opportunity to appear before a judge or a jury” invokes her right to due process of law guaranteed at Art. I § 8.

² Tenn. Code Ann. § 8-8-302 provides that a county may be sued for injuries resulting from the acts of a deputy sheriff; § 8-8-303 waives the county’s governmental immunity for purposes of § 8-8-302.

³ The Defendants contend that Ms. Luna is precluded from raising these issues on appeal because she failed to raise them in response to the motion for summary judgment. We have reviewed the pleadings and other materials filed in support of and in opposition to the summary judgment motion; the argument is without merit. In response to the motion, Ms. Luna responded by filing a response to the statement of material facts, a copy of the mittimus, and a memorandum in which she adopted portions of her deposition and that of her brother; she contended that these materials set forth facts which created genuine issues of material fact and otherwise precluded summary judgment for Defendants. While she did not mention the affirmative defenses of GTLA immunity and qualified immunity by name, the material filed and her memorandum addressed the substance of those doctrines.

II. STANDARD OF REVIEW

On a motion for summary judgment, the moving party is entitled to judgment in its favor only if it can “show that there is no genuine issue as to any material fact and that [it] is entitled to judgment as a matter of law.” Tenn. R. Civ. P. 56.04; *accord Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000).⁴ If the motion is properly supported, “[t]he burden of production then shifts to the nonmoving party to show that a genuine issue of material fact exists.” *Mark VII Transp. Co. v. Responsive Trucking, Inc.*, 339 S.W.3d 643, 647 (Tenn. Ct. App. 2009) (citing *Hannan v. Alltel Publ’g Co.*, 270 S.W.3d 1, 5 (Tenn. 2009)). The moving party may shift the burden by “either affirmatively negat[ing] an essential element of the nonmoving party’s claim or establish[ing] an affirmative defense.” *Id.* The trial court’s ruling on the motion is a question of law that we review *de novo* with no presumption of correctness. *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997).

III. DISCUSSION

The facts pertinent to the resolution of this case are taken from Defendants’ Statement of Material and Undisputed Facts and Ms. Luna’s response thereto; unless otherwise noted, the following facts are not in dispute⁵:

1. On or about November 5, 2011, an arrest warrant was issued for the arrest of one Jo Ann Luna on the charge of theft under \$500.00.
2. The Jo Ann Luna subject to the arrest warrant is different than the plaintiff in this lawsuit, who shares the same name.
3. The other Luna failed to appear for her court appearance and a bench warrant was issued for her arrest.
4. The only identifying information on the bench warrant was the name “Jo A. Luna” and an address of “210 Lum St., Sparta, TN 38583.”

6. The bench warrant commanded that “Jo A. Luna” be brought to the White County jail and held without bond until the court date of March 21, 2012.

⁴ Tenn. Code Ann. § 20-16-101, applicable to summary judgments, was enacted by 2011 Tenn. Pub. Acts. Ch. 498, became effective July 1, 2011 and is applicable to this case.

⁵ The facts that are disputed are not material to the issues raised in the summary judgment motion.

7. On March 9, 2012, defendant Deputy Steve Page went to the address on the bench warrant in order to execute the arrest as commanded.

8. When Deputy Page arrived at 210 Lum Street, Plaintiff's brother, Tim Luna, answered the door.

9. Deputy Page asked Plaintiff's brother if "Joann Luna" was home.

10. Plaintiff's brother informed Deputy Page that Plaintiff was at work and where he could find her.

11. Deputy Page went to Plaintiff's work place, sought Plaintiff out and informed her that he had a warrant for her arrest for failure to appear.

12. Deputy Page asked Plaintiff for identification, she showed it to him, and Deputy Page stated that she was the person he was looking for.

13. Deputy Page showed Plaintiff the bench warrant and Plaintiff admits that it had her name and address on it.

RESPONSE: Paragraph 13 is disputed in that the address on the bench warrant was not Plaintiff's address at that time. She lived at 632 Eaton Road on the day she was arrested. She did not move to Lum Street until after she was released from jail and lost her home because she was behind on the rent. She got behind on the rent because she was in jail and could not work.

16. Plaintiff was handcuffed and placed in the police cruiser.

21. Deputy Page brought Plaintiff to the booking area of the White County justice center, handed some papers to the deputy behind the desk and told Plaintiff to try and get in contact with the judge.

22. The actions and conduct listed in the previous paragraphs was the extent of Deputy Page's involvement.

23. Plaintiff was placed in a holding cell where she remained for two days.

24. After being placed in the holding cell as set out in paragraph 23, Plaintiff was moved into general population.

29. On March 21, 2012, Plaintiff was taken from jail to her court appearance.

30. During the docket call, the name “Joann Luna” is called and both Plaintiff and the other Luna answered the call.

31. The judge asked both of them to spell their names and their names were spelled the same.

32. The judge got both of their social security numbers and Plaintiff was told that the court would try and figure out which was the correct Luna that was supposed to be before the court.

RESPONSE: Paragraph 32 is disputed in that Plaintiff did not say in her deposition that the judge got both their social security numbers.

33. After a little while, Plaintiff was informed that she was the wrong Luna.

34. Plaintiff was then led to speak with Sheriff Shoupe.

39. Plaintiff was then taken back to booking, was booked out and released.

40. Plaintiff never spoke with Sheriff Shoupe before this interaction.

A.) *Immunity under the GTLA*

The GTLA embodies the common law principle that “governmental entities are generally immune from liability for any injury resulting from the exercise of governmental or proprietary functions.” *Helton v. Knox Cnty., Tenn.*, 922 S.W.2d 877, 881 (Tenn. 1996).⁶ The GTLA, however, contains provisions that remove governmental immunity in certain instances; thus, “the GTLA is in derogation of the common law and must be strictly construed.” *Id.* at 882 (citing *Mowdy v. Kelly*, 667 S.W.2d 489, 491 (Tenn. Ct. App. 1983)). At issue in this case is Tenn. Code Ann. § 29-20-205(2), which states:

⁶ Tenn. Code Ann. § 29-20-201(a) provides:

Except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary.

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;

Ms. Luna contends that the court erred in finding that the County was immune from her claims of false imprisonment, invasion of privacy, false arrest, malicious prosecution, and abuse of process. Specifically, she argues that the mittimus⁷ issued for her arrest “was invalid for her, and due to that imperfection, the Defendants, are in fact, liable.”

The parties do not dispute that the mittimus was issued by the circuit court or that Deputy Page was acting within the scope of his employment when he served it. Ms. Luna argues that Deputy Page failed to act “prudently, reasonably, and use ordinary care” in ascertaining whether she was the correct person on the mittimus.⁸ Her argument, however, focuses on what she alleges to be negligence on the part of the County and Deputy Page; under the plain language of the statute, immunity is not removed for causes of action arising out of the serving of a mittimus. As there is no dispute that she was arrested and jailed, the court did not err when it held that the County was immune from suit.

Since White County is immune under the GTLA, we proceed to resolve whether Sheriff Shoupe and Deputy Page are immune from liability based on the common law doctrine of qualified immunity.

⁷ A mittimus is defined as, “a court order or warrant directing a jailer to detain a person until ordered otherwise.” *Black’s Law Dictionary* 1093 (9th ed. 2009). The mittimus is variously referred to in the pleadings as a bench warrant and/or capias; to be consistent, the term mittimus will be used in this opinion.

⁸ Ms. Luna cites *State ex rel. Anderson v. Evatt*, 471 S.W.2d 949, 950 (Tenn. Ct. App. 1971) as establishing that an officer has a duty to act “prudently, reasonably, and [to] use ordinary care in making arrest, including the ascertainment that the right person is being arrested.” She cites Tenn. Code Ann. § 40-7-101 for the same proposition, although that statute only identifies the persons who are privileged to make an arrest, not how the arrest should be conducted.

B.) Qualified Immunity for the Officers

Ms. Luna contends that the court erred in holding that the officers were entitled to qualified immunity for their part in her arrest and 12-day detention.⁹ Defendants contend that Deputy Page is entitled to qualified immunity because he “executed a facially valid bench warrant that [Ms. Luna] herself admits has her correct name and address on it”; Ms. Luna admitted that Deputy Page did not act with “an ulterior motive or malicious intent”; and that Deputy Page acted in good faith and with probable cause.

In holding that the officers were entitled to qualified immunity, the trial court reasoned:

Deputy Page did not institute process or prosecution against Plaintiff, and given the fact that he was merely executing a facially valid bench warrant that Plaintiff herself admits has her correct name and address on it, Deputy Page was acting in good faith and with probable cause and he is entitled to qualified immunity. Further, Sheriff Shoupe had zero interactions with Plaintiff prior to the judge discovering the mix-up. Sheriff Shoupe did not arrest, prosecute or handle any process against Plaintiff. As such, Sheriff Shoupe and Deputy Page are entitled to qualified immunity. If these defendants are entitled to qualified immunity, then there is no liability to impute to the County via Tenn. Code Ann. § 8-8-302 and the same should also be dismissed.

The common law doctrine of qualified immunity “is more than simply a defense to liability.” *King v. Betts*, 354 S.W.3d 691, 704 (Tenn. 2011). “Its purpose is to immunize a public official from the harassment, expense, and distraction caused by the lawsuit itself.” *Id.* (internal citations omitted.). In determining whether a government official is entitled to qualified immunity, we have previously stated that:

[Q]ualified immunity is available to officers of the executive branch of government, the variation being dependent upon the scope of discretion and

⁹ Ms. Luna also argues that the officers did not assert qualified immunity as an affirmative defense in their answer but only when they filed the motion for summary judgment; thus, the court should not have granted summary judgment on that basis. It is true that affirmative defenses are required to be asserted in an answer or responsive pleading, *see* Tenn. R. Civ. P. 12.02; however, as noted in *King v. Betts*:

Because qualified immunity is “an *immunity from suit* rather than a mere defense to liability,” a public official is well-advised to assert qualified immunity “at the earliest possible stage in litigation.” Nevertheless, despite the practical benefits accompanying an early resolution of qualified immunity, the defense may be analyzed at virtually any stage of the proceeding.

354 S.W.3d 691, 708 (Tenn. 2011) (internal citations omitted) (emphasis in original).

responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct.

Youngblood v. Clepper, 856 S.W.2d 405, 407 (Tenn. Ct. App. 1993) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 247-48 (1974)).

Our Supreme Court has detailed the procedure by which the defense of qualified immunity is resolved on a motion for summary judgment:

When a public official seeks a summary judgment on the ground of qualified immunity, the claim should be treated as an affirmative defense. Accordingly, when the public official alleges that the undisputed facts demonstrate that he or she is entitled to qualified immunity, the burden of production shifts to the plaintiff to demonstrate that the public official is not entitled to qualified immunity. A public official establishes a prima facie claim of qualified immunity by demonstrating that he or she is a state official acting within his or her discretionary authority. A plaintiff confronted with a summary judgment motion raising qualified immunity must demonstrate the inapplicability of the defense. The plaintiff can defeat the motion either by demonstrating the existence of material factual disputes or by demonstrating that the defendant is not entitled to qualified immunity as a matter of law.

King, 354 S.W.3d at 710 (internal citations omitted).

The statement of facts, along with the other material filed in support of the summary judgment motion, evidences that a mittimus was issued to bring “Jo A. Luna” to the White County jail and hold her without bond until March 21, 2012; that Deputy Page went to the address on the mittimus, 210 Lum Street; that while at 210 Lum Street, Ms. Luna’s brother directed Deputy Page to her place of employment; that Deputy Page located Ms. Luna while at work and informed her that he had a mittimus for her arrest; that Ms. Luna complied with Deputy Page’s request for identification; and that Deputy Page arrested Ms. Luna and delivered her to the White County jail; that she had no contact with Sheriff Shoupe prior to being taken to court, where she was informed that she was the “wrong Luna” and released. These are facts that would establish reasonable grounds for Deputy Page to serve the mittimus and arrest Ms. Luna pursuant thereto; he was free arrest to Ms. Luna “without fear of being second-guessed by the judiciary.” See *Youngblood*, 856 S.W.2d at 408. Similarly, the same record evidences that Sheriff

Shoupe did nothing to effect the issuance of the mittimus, her arrest, or her imprisonment, and that he had no contact with her until she had been released.

Other than her response to the statement of undisputed facts and a copy of the mittimus, Ms. Luna did not file evidence in response to the motion which would create an issue of fact for trial relative to the defense of qualified immunity; rather, in her response she focused on what she contends to be a duty on the part of Sheriff Shoupe and Deputy Page to investigate and verify that she was the “Jo A. Luna” referenced in the mittimus. The standard for qualified immunity, however, is whether the officer had reasonable grounds to perform the official conduct which is being challenged. On the record presented, we agree with the trial court that Deputy Page was “merely executing a facially valid bench warrant” and that Sheriff Shoupe “had zero interactions with [Ms. Luna] prior to the judge discovering the mix-up.” The facts show that Sheriff Shoupe and Deputy Page are entitled to qualified immunity for their actions.¹⁰

C.) Immunity Provided by the Public Duty Doctrine

Ms. Luna argues in her brief that her complaint is not barred by the public duty doctrine, which is a common law doctrine which “shields a public employee from suits for injuries that are caused by the public employee’s breach of a duty owed to the public at large.” *Ezell v. Cockrell*, 902 S.W.2d 394, 397 (Tenn. 1995). The duties of Sheriff Shoupe and Deputy Page at issue in this case are the duty to execute and return court process, Tenn. Code Ann. § 8-8-201(a)(1), and to receive those lawfully committed to the jail until discharged, Tenn. Code Ann. § 8-8-201(a)(3); these are duties owed to the public at large. The allegations of the complaint, and the evidence put forth in support of the motion for summary judgment, bring the actions of the officers within the public duty doctrine of governmental immunity. *See Hurd v. Woolfolk*, 959 S.W.2d 578, 581 (Tenn. Ct. App. 1997) (holding that an allegation that a sheriff was negligent in failing to promptly and properly process an arrest warrant invoked the public duty doctrine because the sheriff’s duty to execute warrants is a public duty “not owed to any individual in particular.”).

IV. CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed.

RICHARD H. DINKINS, JUDGE

¹⁰ The trial court held that since Sheriff Shoupe and Deputy Page were entitled to qualified immunity there was no liability to be imputed to the County pursuant to Tenn. Code Ann. § 8-8-302; we concur with this ruling.