

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

JEREMY DAVIS,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 99-1218
	)	
HARDIN COUNTY, TENNESSEE, et al.,	)	
	)	
Defendants	)	

---

ORDER DENYING IN PART AND GRANTING IN PART  
HARDIN COUNTY'S MOTION FOR SUMMARY JUDGMENT

---

Plaintiff, Jeremy Davis, has filed this action against Defendants, Hardin County, Tennessee, pursuant to 42 U.S.C. § 1983, alleging that Defendants violated his Eighth Amendment rights by acting with deliberate indifference to his serious medical needs. In the second amended complaint, Plaintiff also asserts causes of action for assault and battery under Tennessee common law, for negligence under the Tennessee Governmental Tort Liability Act (GTLA) and for the intentional acts of jailer Deshazier under Tennessee Code Annotated § 8-8-302 (§ 8-8-302). On March 21, 2001, Defendants filed a motion for summary judgment. On May 14, 2001, the court granted in part and denied in part Defendants' motion for summary judgment and declined to exercise jurisdiction over Plaintiff's state law claims. On October 1, 2001, Plaintiff filed a motion to reconsider the

dismissal of his state law claims. On October 23, 2001, the court granted Plaintiff's motion for reconsideration and reinstated Plaintiff's state law claims. Defendants have now moved for summary judgment concerning Plaintiff's state law claims. For the reasons set forth below, Defendants' motion for summary judgment is denied in part and granted in part.

### Facts

Plaintiff has alleged that on or about August 19, 1998, Defendants held Plaintiff in custody at the Hardin County Jail. At approximately 3:00 p.m., Plaintiff returned to the jail from a work detail where he had been working in extremely hot weather. Between 3:00 and 3:30 p.m., Plaintiff became seriously ill and experienced convulsive seizures. Other inmates at the jail notified jailers of Plaintiff's condition and requested medical attention for him at approximately 3:30-4:30 p.m. The jailers told Plaintiff and the other inmates at approximately 4:00-5:00 p.m. that an ambulance had been contacted. However, an ambulance was not called until 7:19 p.m. Plaintiff contends that he was left in his jail cell between 3:30 p.m. and 7:19 p.m. with no medical attention while employees of the jail observed him on at least three occasions in obvious distress. Because of the substantial delay in receiving medical treatment, Plaintiff allegedly suffered a permanent brain injury.

As an initial matter the court must address Plaintiff's contention that the matters addressed by the Defendants' motion for summary judgment have been previously resolved by the court. Plaintiff is quite correct in stating that the substance of both of Defendants' arguments has been presented to the court before. Defendants' first argument—that jailer

James Deshazier was not an agent of Hardin County—was presented in a previous motion for summary judgment. The subsequent order on the motion for summary judgment did not rule on the specific issue presented here. Instead, the court declined jurisdiction over the state law claims. The court later reasserted jurisdiction over the state law claims thereby reviving the issue. Accordingly, the law of the case doctrine does not prohibit the court from review of Defendants’ first argument since the court never passed on the issue of whether Hardin County could be liable for the actions of Jailer Deshazier.

Defendants’ second argument—that it has discretionary immunity—was presented earlier in this case in the context of a motion to dismiss for failure to state a claim pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure. In Defendants’ reply brief, it alleges that its original argument in the motion to dismiss was that the acts of Jailer Deshazier were covered by discretionary immunity and that in the current motion for summary judgment, Defendants argue that decisions concerning how to provide medical care to inmates are protected by discretionary immunity. Because Defendant’s current motion is not the same as their prior motion, Defendants’ second argument for summary judgment is not precluded by the earlier order denying Defendants’ renewed motion to dismiss.

#### Summary Judgment Standards

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. To prevail on a motion for summary judgment, the moving party has the burden of showing the “absence of a genuine issue of material fact as to an essential element of the

nonmovant's case." Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989). The moving party may support the motion with affidavits or other proof or by exposing the lack of evidence on an issue for which the nonmoving party will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The opposing party may not rest upon the pleadings but, "by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

"If the defendant . . . moves for summary judgment . . . based on the lack of proof of a material fact, . . . [t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). The court's function is not to weigh the evidence, judge credibility, or in any way determine the truth of the matter. Anderson, 477 U.S. at 249. Rather, "[t]he inquiry on a summary judgment motion . . . is . . . 'whether the evidence presents a sufficient disagreement to require submission to a [trier of fact] or whether it is so one-sided that one party must prevail as a matter of law.'" Street, 886 F.2d at 1479 (quoting Anderson, 477 U.S. at 251-52). Doubts as to the existence of a genuine issue for trial are resolved against the moving party. Adickes v. S. H. Kress & Co., 398 U.S. 144, 158-59 (1970).

#### Hardin County's Potential Liability for the Conduct of James Deshazier<sup>1</sup>

---

<sup>1</sup> Within Defendants' argument concerning the county's liability for the actions of Jailer Deshazier, Defendants state that the court has dismissed all claims based upon intentional torts. This is but one instance among many which suggests confusion concerning which claims are active in this case. The court's previous order granting Plaintiff's motion for reconsideration reinstated all state law claims asserted by the Plaintiff in his complaint. This includes Plaintiff's claims pursuant to GTLA and Plaintiff's claim pursuant to 8-8-302. To the extent this court's

Defendants argue that it cannot be responsible for the allegedly negligent acts of Jailer James Deshazier. More specifically, Defendants argue that Tennessee Code Annotated § 41-4-101 assigns civil liability for the actions of a jailer to the sheriff of a county. See Tenn. Code. Ann. § 41-4-101. Though Defendants are correct in that the sheriff is responsible for the actions of the jailers he or she appoints, Defendants are incorrect in attempting to expand this section to make the Sheriff the only party that can ever be liable for a jailer's actions.

Tennessee's GTLA is clearly at odds with Defendants' contention. See Tenn. Code Ann. § 29-20-102. The GTLA clearly defines employees as "including the sheriff and the sheriff's employees . . ." See id. Furthermore, it is clear that a county is a "governmental entity" for the purpose of the GTLA and the "sheriff and sheriff's employees" are employees of the county for purposes of the GTLA. See id.

The court faces a considerably different and more difficult question when analyzing Plaintiff's claims brought pursuant to § 8-8-302. This section states:

Anyone incurring any wrong, injury, loss, damage or expense resulting from any act or failure to act on the part of any deputy appointed by the sheriff may bring suit against the county in which the sheriff serves; provided, that the deputy is, at the time of such occurrence, acting by virtue of or under color of the office.

Tenn. Code Ann. § 8-8-302.

Defendants argue that § 8-8-302 allows civil suits against the county for the conduct of deputy sheriffs and not for the conduct of jailers. Plaintiff argues that a Jailer should be

---

order granting Plaintiff's motion to reconsider could be construed otherwise, it is hereby modified accordingly.

considered a deputy for the purposes of § 8-8-302. The court has been unable to find any Tennessee decisions directly resolving the issue presented by the parties.<sup>2</sup> As a Federal Court applying state law, this court must attempt to predict whether the courts of Tennessee would recognize a jailer as a deputy for the purposes of § 8-8-302. See Owens Corning v. National Union Fire Ins. Co., 257 F.3d 484 (6th Cir. 2001) (stating that “[i]f the state supreme court has not yet addressed the issue presented, we must predict how it would rule, by looking to ‘all available data,’ including state appellate decisions”).

For numerous reasons, the court is convinced that the courts of Tennessee would find that a jailer is not a deputy for the purposes of § 8-8-302. In approaching this issue, it should first be noted that the court is dealing with a statute waiving governmental immunity. Tennessee courts have traditionally treated statutes which waive sovereign immunity with great deference to the language of the statute. Quoting from the Tennessee Supreme Court in reference to the GTLA:

The limited waiver of governmental immunity provided for in the Act is in clear derogation of the common law. Generally, statutes in derogation of the common law are to be strictly construed and confined to their express terms, and that rule of construction has been expressly incorporated into the Act....

Doyle v. Frost, 49 S.W.3d 853, 858 (Tenn. 2001) (quoting Ezell v. Cockrell, 902 S.W.2d

---

<sup>2</sup> Although the court has been unable to find any cases directly addressing the issue, one Tennessee Supreme Court case upheld the dismissal of a § 8-8-302 claim asserted against a county for the conduct of a “correctional officer” employed by the sheriff’s department. Corder v. Metropolitan Government of Nashville and Davidson County, Tenn., 852 S.W.2d 910 (Tenn.App. 1992). The opinion of the court in that case did not indicate that the issue was presented to the court and the court upheld the dismissal based upon the fact that the officer was not on duty at the time of the wrongful conduct. Accordingly, the case does not serve as a precedent for the issue at hand.

394, 399 (Tenn.1995)). Since § 8-8-302 similarly modifies the common law, it would be strictly construed by the Tennessee Supreme Court. Under a strict construction of § 8-8-302 the term deputy would not be extended to cover jailers.

Another reason Tennessee courts are likely to distinguish between deputies and jailers is because the legislature has made that same distinction. Other provisions of the Tennessee Code reinforce the view that the Tennessee legislature distinguishes between the terms “deputy” and “jailer”. The best indication of this is provided by Tennessee Code Annotated § 8-8-201 (3) which states that the sheriff of the county shall “[t]ake charge and custody of the jail of the sheriff’s county, and of the prisoners therein; receive those lawfully committed, and keep them personally, or by deputies or jailer, . . .” Tenn. Code Ann. § 8-8-201 (3) (Supp. 2001) (emphasis added). Yet another indication is provided at Tennessee Code Annotated § 40-11-128, where the legislature elected to list jailers and deputies separately in enumerating those disqualified from serving as bondsmen. See Tenn. Code Ann. § 40-11-128. Given these listings of “deputies” and “jailers” separately, it is clear that the Tennessee legislature draws a distinction between the two terms.

The interaction of the GTLA and § 8-8-302 also provides ample basis for concluding that the Tennessee legislature distinguishes between the liability for jailers and deputies. The Tennessee legislature passed § 8-8-302 in 1972. The section is very inclusive in terms of the actions which it potentially covers—essentially it allows a cause of action for any wrongful action of a deputy. The next year the Tennessee legislature passed the GTLA.

Although the GTLA, in comparison to § 8-8-302, made governmental entities liable for the actions of a larger selection of employees, the actions which could create liability were decidedly narrower. Thus, GTLA was broader than § 8-8-302 in that the actions of more employees could subject a governmental entity to a cause of action, but narrower in that the causes of action which the governmental entity could be sued for were fewer. From the interplay of these two statutes, one could conclude that the Tennessee legislature intended to provide government liability for the actions of jailers governed by the narrower liability of the GTLA and to reserve the heightened liability of the county in § 8-8-302 for actions of deputies.

Further, there are considerable logical differences between deputies and jailers which support the legislature's distinction between the two. Deputies, generally speaking, are better trained and are given duties which bring them in closer contact with the general public. Jailers, on the other hand, are often provided less training and are given duties which are normally conducted within the confines of the county jail. These two jobs are vastly different in nature and the potential liability of a county for the actions of agents holding these positions is likewise different. Thus, it is not surprising that the Tennessee Legislature decided to differentiate these positions for the purpose of governmental immunity.

Tennessee caselaw interpreting § 8-8-302 in light of the GTLA also provides an alternative basis for dismissing Plaintiff's § 8-8-302 claim. In Jenkins v. Loudon County, 736 S.W.2d 603 (Tenn. 1987) the Tennessee Supreme Court stated that "the scope of the

GTLA is generally intended to exclude intentional torts,” but that if a “specific or special statute provides” for causes of actions beyond those provided by “the GTLA, then those remedies would not be affected by the GTLA . . . .” Jenkins, 736 S.W.2d at 608. Thus, “[a]ctions for the non-negligent misconduct of deputies . . . may . . . be covered by T.C.A. § 8-8-301, *et seq.*, in the appropriate cases.” Jenkins, 736 S.W.2d at 609 (internal citations omitted).

In Limbaugh v. Coffee Medical Center, 59 S.W.3d 73, 81 (Tenn. 2001) the Tennessee Supreme Court abrogated Jenkins. The Tennessee Supreme Court in Limbaugh determined that the opinion in Jenkins overly restricted the application of the GTLA. More specifically, the court found that the list of excluded actions provided in § 29-20-205 (2)<sup>3</sup> was intended to be a comprehensive list of actions excluded by the GTLA and that its application to all non-negligent torts was incorrect. Thus, in Limbaugh the court limited the exclusion of actions listed in Tennessee Code Annotated § 29-20-205 (2) to those specifically listed instead of the previous interpretation which extended the list to all non-negligent torts. See Limbaugh, 59 S.W.3d at 81.

Although Limbaugh abrogated Jenkins, it clearly did not affect the holding in Jenkins

---

<sup>3</sup> The section actually excludes actions which “[a]rises out of 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). In Jenkins the court concluded that § 29-20-205(2) excluded all intentional torts from the scope of the GTLA. See Jenkins, 736 S.W.2d at 609.

concerning § 8-8-302.<sup>4</sup> Indeed, the Limbaugh opinion did not address § 8-8-302, nor did the opinion indicate what affect it would have on the future application of § 8-8-302. Logic would indicate that the Limbaugh opinion would affect the application of § 8-8-302. Since Limbaugh expanded the application of the GTLA to some non-negligent torts, § 8-8-302 would no longer be applicable to those torts. See Jenkins, 736 S.W.2d at 81. Since Limbaugh specifically made assault and battery actionable under the GTLA, § 8-8-302 would no longer cover those causes of action.

In this case, Plaintiff's intentional tort allegations were assault and battery. These actions are not listed in § 29-20-205 (2) and are now actionable under GTLA. Since these causes are actionable under the GTLA, § 8-8-302 no longer provides causes of action for assault and battery. Since Plaintiff has not stated any other intentional claim actionable under § 8-8-302, Plaintiff has not stated a claim under 8-8-302. Accordingly, Defendants' motion for summary judgement must be granted as it concerns § 8-8-302.

#### Discretionary Function

In Defendants' motion for summary judgment, Defendants argue that the county's adoption of policies related to the provision of medical care is an action covered by discretionary immunity. This may well be true. However, the court does not need to resolve this dispute since it is immaterial to the resolution of Plaintiff's GTLA claim. In Plaintiff's GTLA claim, Plaintiff seeks to hold Hardin County liable for the actions of Jailer Deshazier,

---

<sup>4</sup> In Limbaugh the court had no cause to analyze § 8-8-302 since the state actions were not conducted by deputies. See Limbaugh, 59 S.W.3d at 76.

not for negligence in adopting policies regarding the medical care to be provided to inmates. See Amended Complaint, ¶¶ 23-30; Plaintiff's Response to Defendants' Reply to Plaintiff's Response to Defendants' Motion to Dismiss, at 2. Accordingly, Defendants' motion for summary judgment based upon discretionary function immunity is denied.

Conclusion

Having considered the arguments of the parties, the court finds that, given the disputed facts in this case, Hardin County could be liable for the actions of Jailer Deshazier under the GTLA. The court also finds that no genuine issues of material fact exist concerning Plaintiff's claims pursuant to § 8-8-302 and that Defendants are entitled to judgment as a matter of law. In accordance with these findings, Hardin County's motion for summary judgment is DENIED as it concerns Plaintiffs claim arising under the GTLA and Hardin County's motion for summary judgment is GRANTED as it concerns Plaintiff's claim pursuant to § 8-8-302. Plaintiff's claim arising under Tennessee Code Annotated § 8-8-302 is DISMISSED.

IT IS SO ORDERED.

\_\_\_\_\_  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE

\_\_\_\_\_  
DATE

