RENDERED: FEBRUARY 3, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000448-MR

ELAINE FARRIS — APPELLANT

v.

APPEAL FROM CLARK CIRCUIT COURT
HONORABLE JEAN CHENAULT LOGUE, JUDGE
ACTION NO. 12-CI-00673

PAUL COLUMBIA — APPELLEE

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: ACREE, COMBS, AND JONES, JUDGES.

JONES, JUDGE: The Appellant, Dr. Elaine Farris, brings this appeal to challenge the Clark Circuit Court's order denying her motion for summary judgment. The Appellee, Paul Columbia, moves to dismiss the Farris appeal as interlocutory. Having carefully reviewed the record, we agree with Mr. Columbia that this appeal is interlocutory.

I. BACKGROUND

Dr. Farris is the former superintendent of Clark County Public Schools. Mr. Columbia is the former assistant principal and head football coach of George Rogers Clark High School, which is part of Clark County Public Schools. In December of 2011, while both parties were still employees of Clark County Public Schools, Dr. Farris met with Mr. Columbia to inform him that he was being relieved of his duties as head football coach. Mr. Columbia initially requested that he be allowed to resign from the position, rather than be terminated, and Dr. Farris complied with this request. Thus, Mr. Columbia issued a statement to the *Winchester Sun* newspaper that evening, explaining that he was resigning from the football program. Less than a week later, Mr. Columbia issued a subsequent statement to the *Winchester Sun*, in which he retracted his earlier statement and, instead, stated that he had been terminated from the position and did not agree with the reasons for which he had been fired.

In November of 2012, Dr. Farris brought defamation and harassment claims against Mr. Columbia, Patricia Columbia, and Joan Graves. Mr. Columbia filed counterclaims against Dr. Farris alleging that Dr. Farris had defamed him in the course of removing his coaching duties and had fired him in violation of the Kentucky Constitution. Those counterclaims are the only remaining claims in this action.

In June of 2013, Dr. Farris moved to dismiss the counterclaims as barred by sovereign immunity, governmental immunity, and qualified official immunity. The circuit court denied Dr. Farris's motion to dismiss as premature. She appealed to our Court. In December of 2013, we granted Mr. Columbia's motion to dismiss the appeal for failure to appeal from a final and appealable order.

Thereafter, the parties engaged in additional discovery. Following this additional discovery, Dr. Farris filed a motion for summary judgment wherein she sought judgment in her favor on grounds of sovereign, governmental, and qualified official immunity and on other arguments. The Clark Circuit Court denied the motion upon finding that "genuine issues of fact have been raised such that summary judgment is inappropriate at this time." Dr. Farris appealed the denial to our Court. Mr. Columbia responded by moving to dismiss the appeal. His motion to dismiss was ordered passed to this merits panel so that we could consider the parties' arguments in light of a more developed record.

II. ANALYSIS

"It is well settled in this Commonwealth that the denial of a motion for summary judgment is interlocutory." *Roman Catholic Bishop of Louisville v. Burden*, 166 S.W.3d 414, 419 (Ky. App. 2004). This premise is not altered by the fact that the trial court includes finality language in its order, as the circuit court did in this instance. *Id.* "The Court of Appeals has jurisdiction to review

interlocutory orders of the Circuit Court in civil cases, but *only* as authorized by rules promulgated by the Supreme Court." KRS[1] 22A.020(2) (emphasis added). While our authorization in this area is quite limited, we are permitted to review "an order denying a substantial claim of absolute immunity . . . even in the absence of final judgment." *Breathitt County Bd. of Educ. v. Prater*, 292 S.W.3d 883, 887 (Ky. 2009).

The question we must resolve in this case is whether the circuit court actually denied Dr. Farris's immunity claims. The circuit court did not rule that Dr. Farris was not entitled to immunity. It denied her summary judgment on the basis that disputed material facts existed making summary judgment improper. Certainly, it would have been helpful for the trial court to identify those issues as related to each defense asserted by Dr. Farris in her motion. However, the blame for any such deficiency should not be laid entirely at the trial court's feet. Dr. Farris had a variety of options available to her, including asking the trial court to clarify its order as to whether it was actually denying her claim for immunity, and if not, to identify the disputed issues of material fact it believed prevented it from deciding the immunity issue. She did not take any of these actions prior to appeal.

This leaves us with an order finding the existence of material issues of disputed fact, but not making any actual determination as to the availability of

[1] Kentucky Revised Statutes.

immunity as a defense. Therefore, even though immunity is at issue, the order, as rendered, is not immediately appealable because it leaves the immunity question unresovled.[2] *See Hyden-Leslie Water Dist. v. Jessie Hoskins & Perry Const., Inc.*, No. 2010-CA-000599-MR, 2011 WL 919818, at *2 (Ky. App. Mar. 18, 2011); *Adair Cty. v. Stearman*, No. 2010-CA-001953-MR, 2011 WL 4103137, at *2 (Ky. App. Sept. 16, 2011).[3]

III. ORDER

Based on the foregoing, this Court ORDERS that the motion to dismiss be GRANTED and this appeal be DISMISSED for failing to appeal from a final and appealable order. The motion for sanctions is DENIED.

ALL CONCUR.

ENTERED: February 3, 2017

Allison Emerson Jones

JUDGE, COURT OF APPEALS

[2] We appreciate Dr. Farris's arguments concerning judicial promptness in ruling on claims of immunity. Immunity should be determined early on, if possible. In many cases, the parties agree on the facts so immunity can be decided rather early on. In other cases, like the present, however, the facts are hotly contested. This makes immunity more difficult to determine early. This does not mean, however, that a defendant must go through a full blown trial before immunity is finally decided. For example, a defendant could always request that the immunity issue be bi-furcated and decided first.

[3] We recognize we are not bound by unpublished opinions, but cite them as instructive only in the absence of any published authority directly on point. *See* CR 76.28(4)(c).

BRIEF FOR APPELLANT:

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Elizabeth M. Bass
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BRIEF FOR APPELLEE:

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